

**EXHIBIT C**

12:53:21

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER

QUYEN KIM DANG, INDIVIDUALLY )  
AND AS GUARDIAN AD LITEM FOR )  
KENNY MINH CAO TRAN, A MINOR, )  
AND PERSONAL REPRESENTATIVE )  
OF ANDY TRAN, DECEASED; KENNY )  
MINH CAO TRAN, A MINOR BY AND )  
THROUGH HIS GUARDIAN AD LITEM )  
QUYEN KIM DANG NAM TRAN, )  
BIOLOGICAL FATHER OF ANDY TRAN)  
DECEASED; BUA THI PHAN, )  
MOTHER OF ANDY TRAN, DECEASED, )

)  
Plaintiff, )  
)

vs. ) No. 30-2009 00325347

)  
CITY OF GARDEN GROVE; GARDEN )  
GROVE CHIEF OF POLICE, JOSEPH )  
M. POLISAR; GARDEN GROVE )  
POLICE OFFICER GENDREAU; )  
GARDEN GROVE POLICE OFFICER )  
KARSCHAMROOM; TASER )  
INTERNATIONAL, INC., AND )  
DOES 1 TO 10, INDIVIDUAL; AND )  
DOES 1 TO 10, ENTITIES, )  
INCLUSIVE, )

)  
Defendants. )  
)

**CERTIFIED  
COPY**

VIDEOTAPED DEPOSITION OF RICHARD GENDREAU

Westminster, California

Monday, March 21, 2011

Reported by:  
STEPHANIE WILLIAMS  
CSR No. 13482

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER  
3

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5 AND AS GUARDIAN AD LITEM FOR )  
6 KENNY MINH CAO TRAN, A MINOR, )  
7 AND PERSONAL REPRESENTATIVE )  
8 OF ANDY TRAN, DECEASED; KENNY )  
9 MINH CAO TRAN, A MINOR BY AND )  
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DOES 1 TO 10, INDIVIDUAL; AND )  
DOES 1 TO 10, ENTITIES, )  
INCLUSIVE, )  
Defendants. )  
\_\_\_\_\_  
19 Videotaped deposition of RICHARD GENDREAU,  
20 taken before Stephanie Williams, a Certified Shorthand  
21 Reporter for the State of California, with principal  
22 office in the County of Orange, commencing at 1:15 p.m.,  
23 Monday, March 21, 2011, at the Law Offices of  
24 Sean Hennessey, 8231 Westminster Boulevard, Westminster,  
25 California.

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFFS, Quyen Kim Dang, et al.:

3 LAW OFFICES OF SEAN HENNESSEY  
4 BY: Sean Hennessey, ESQ.  
5 8231 Westminster Boulevard  
6 Westminster, California 92683  
7 (949) 280-1257  
8 (714) 898-7449  
9 seanhennesseyesq@gmail.com

10  
11 LAW OFFICES OF LIEM DO & ASSOCIATES  
12 BY: Paul Minhthu Pham  
13 8231 Westminster Boulevard  
14 Westminster, California 92683  
15 (714) 898-7579  
16 liemhdoesq@yahoo.com

17 FOR THE DEFENDANT, City of Garden Grove:

18 FERGUSON, PRAET & SHERMAN  
19 BY: Steven A. Sherman, ESQ.  
20 1631 East 18th Street  
21 Santa Ana, California 92705  
22 (714) 953-5300  
23 (714) 953-1143

24 ALSO PRESENT:

25 Quyen Kim Dang  
Daniel Karschamroon

## I N D E X

**WITNESS**

RICHARD GENDREAU

	PAGE
Examination by Mr. Hennessey:	6

**E X H I B I T S**

	Description	Page Introduced	Page Marked
9			
10	Exhibit A	Supplemental Report by Officer Avalos	64
11			64
12	Exhibit B	Dispatch Printouts	67
13	Exhibit C	Dispatch Log Printouts	69
14	Exhibit D	Diagram of the Scene	85
			86

**INFORMATION REQUESTED**

(NONE)

13:35:42 1 with Dr. Blum, have you sought out any other type of  
13:35:47 2 medical care, treatment of any type, therapy,  
13:35:49 3 counseling, since that date, other than this session  
13:35:52 4 that you talk about with Dr. Blum?

13:35:55 5 A No.

13:35:55 6 Q In -- prior to September 3rd, 2008, had you  
13:36:02 7 ever been involved in any type of physical sporting  
13:36:07 8 activity such as football, wrestling, Ultimate Fighting,  
13:36:12 9 martial arts, anything of that type?

13:36:13 10 MR. SHERMAN: Let me object to the form of the  
13:36:15 11 question as it's compound; it's overbroad in both scope  
13:36:19 12 and time; it's irrelevant; it's not necessarily likely  
13:36:22 13 to lead to the discovery of admissible evidence.

13:36:29 14 In his adult life at least?

13:36:29 15 BY MR. HENNESSEY:

13:36:32 16 Q Yeah. Since high school. Eighteen on. I  
13:36:34 17 don't care what you did when you were below the age of  
13:36:36 18 18.

13:36:37 19 MR. SHERMAN: Same objections.

13:36:38 20 However, you may answer.

13:36:39 21 THE WITNESS: Yes, I took martial arts  
13:36:42 22 instruction.

13:36:42 23 BY MR. HENNESSEY:

13:36:42 24 Q And what -- and I'm talking before  
13:36:44 25 September 3rd of 2008. What type of martial arts

13:36:47 1 instruction did you receive?

13:36:48 2 A I took Kenpo.

13:36:49 3 Q Okay. And is that a form of karate?

13:36:53 4 A Yes.

13:36:53 5 Q Okay. And approximately how old were you when

13:36:56 6 you began that training?

13:36:57 7 A Approximately 21.

13:36:58 8 Q Okay. And so what year would that have been?

13:37:05 9 What year would it have been when you were 21?

13:37:06 10 A It was right when I had moved out here in 2003.

13:37:10 11 Q Okay. So about 2003 you began. And where did

13:37:13 12 you receive -- start taking those lessons?

13:37:16 13 A At United Studios of Self-Defense.

13:37:19 14 Q And where is that?

13:37:19 15 A Newport Beach.

13:37:21 16 Q Is that the one right off of Peninsula?

13:37:24 17 A No.

13:37:24 18 Q Okay. And how long did you continue on with

13:37:31 19 that particular type of martial art?

13:37:35 20 A I stopped about two months before I went to the

13:37:39 21 academy, so approximately two-and-a-half years.

13:37:41 22 Q Okay. And what belt -- do they rise in that

13:37:46 23 particular martial art by the -- by acquiring different

13:37:49 24 types of belts?

13:37:51 25 A Yes.

13:37:51 1 Q Do you know what belt -- what the highest level  
13:37:54 2 of martial arts belt you received from that particular  
13:37:57 3 institute?

13:37:57 4 A I honestly don't recall.

13:37:59 5 Q Do you recall testing for any type of purple  
13:38:02 6 belt, brown belt, black belt, do you remember going  
13:38:06 7 through any type of testing?

13:38:06 8 A The last I remember testing for, I believe was  
13:38:09 9 my brown belt. My first degree.

13:38:11 10 Q Okay. And can you just explain the levels of  
13:38:21 11 belts at that particular martial arts studio.

13:38:21 12 MR. SHERMAN: I'm going to object to the form  
13:38:21 13 of the question as being irrelevant; calls for a  
13:38:21 14 narrative; may cause and call for speculation.

13:38:25 15 You may answer, of course.

13:38:26 16 THE WITNESS: There's numerous levels, starting  
13:38:31 17 with white belt, which is the -- which is for a  
13:38:35 18 brand-new student. And then rises from there. I don't  
13:38:39 19 recall the actual order, but I believe there was  
13:38:42 20 approximately five or six levels, prior to when I had  
13:38:44 21 finished, that I had completed.

13:38:46 22 BY MR. HENNESSEY:

13:38:46 23 Q Do you recall it going white, yellow, green,  
13:38:49 24 blue, brown and then black; does that sound familiar?

13:38:53 25 A No, I believe -- if memory serves me right, I

13:47:37 1 A Yes.

13:47:38 2 Q Okay. So there was live -- there was live

13:47:42 3 training in various different scenarios to attempt to

13:47:46 4 handcuff people in various situations standing up,

13:47:49 5 correct?

13:47:50 6 A Yes.

13:47:50 7 Q Did your training in relation to -- after you

13:47:57 8 completed Golden West College, when was that, if you

13:48:00 9 recall, of your approximate graduation date?

13:48:03 10 A September 9th of 2005.

13:48:05 11 Q 9/9/05. And where did you go after that? Did

13:48:09 12 you go to any particular law enforcement agency or what

13:48:12 13 did you do after that?

13:48:13 14 A I got sworn in as an officer with the

13:48:17 15 Garden Grove P.D.

13:48:17 16 Q Okay. Would it be fair to say that your entire

13:48:19 17 time as a law enforcement officer has been spent at the

13:48:23 18 Garden Grove Police Department?

13:48:24 19 A Yes.

13:48:24 20 Q Does the Garden Grove Police Department since

13:48:27 21 September -- did you -- were you sworn in as a police

13:48:31 22 officer in September 9th of 2005 at Garden Grove?

13:48:31 23 THE REPORTER: September 9th?

13:48:31 24 BY MR. HENNESSEY:

13:48:31 25 Q September 9th -- is that -- September 9th,

14:04:04 1 Q Okay. What is your understanding as to what  
14:04:13 2 the Fourth Amendment is?

14:04:15 3 A The Fourth Amendment provides --

14:04:18 4 MR. SHERMAN: Let me -- let me make an  
14:04:21 5 objection as to calls for possible legal opinion,  
14:04:24 6 interpretation analysis.

14:04:26 7 I've been an attorney for 27 years and I don't  
14:04:30 8 know if I understand what the Fourth Amendment is.

14:04:30 9 But go ahead.

14:04:30 10 BY MR. HENNESSEY:

14:04:33 11 Q I'm just asking what you've been trained as to  
14:04:36 12 what it is. It may not be right, but just whatever you  
14:04:38 13 can recall you being trained in relation to complying  
14:04:42 14 with the Fourth Amendment as a police officer.

14:04:45 15 A My training has given me the understanding that  
14:04:47 16 the Fourth Amendment safeguards citizens against  
14:04:50 17 unlawful searches and seizures of both themselves and  
14:04:52 18 their property.

14:04:54 19 Q Is it your understanding that that amendment is  
14:04:58 20 supposed to protect individual citizens from  
14:05:01 21 unreasonable police searches and seizures?

14:05:04 22 A Yes.

14:05:04 23 Q How much time have you spent dedicated to  
14:05:11 24 applying the standard of -- well, you indicated earlier  
14:05:17 25 that you would go on -- or you would have certain

14:42:52 1 to September 3rd of 2008?

14:42:53 2 BY MR. HENNESSEY:

14:42:54 3 Q Yeah, absolutely.

14:42:55 4 A Okay. I recall being told that it had to be

14:42:59 5 used or -- it was suggested to be used whenever you

14:43:03 6 believed that you were going to be detaining somebody

14:43:06 7 and you felt that a recording would be useful as far as

14:43:11 8 evidence or to capture the actions of someone who was

14:43:16 9 uncooperative.

14:43:17 10 Q Okay. And to your knowledge, from the time

14:43:20 11 that you had become a patrol officer in -- well, let's

14:43:27 12 just talk about the year 2008. Did you have a specific

14:43:29 13 unit that you went to every day or were they randomly

14:43:33 14 assigned?

14:43:34 15 A Randomly assigned.

14:43:36 16 Q Did you have a specific call name back on

14:43:39 17 September 3rd of 2008? Call number or name or

14:43:42 18 combination of the two?

14:43:42 19 A Yes.

14:43:43 20 Q And what was your call sign?

14:43:45 21 A I was 253 bravo, B.

14:43:47 22 Q 253 B, as in bravo?

14:43:50 23 A Yes.

14:43:51 24 Q Okay. And have you -- back in September 3rd of

14:43:54 25 2008, did you use any other designations to identify

14:56:06 1 THE WITNESS: At the time I did not know the  
14:56:08 2 severity of the situation. It didn't occur to me to  
14:56:13 3 turn it on when I exited my vehicle.

14:56:16 4 BY MR. HENNESSEY:

14:56:16 5 Q Earlier you indicated that in relation to the  
14:56:18 6 type of call this was that this was a -- not a  
14:56:29 7 high-priority call but a priority call, do you recall  
14:56:34 8 testifying to words to that effect?

14:56:35 9 A Yes.

14:56:36 10 Q How did you describe the call earlier, the type  
14:56:38 11 of call that you were responding to?

14:56:40 12 MR. SHERMAN: Objection. Asked and answered.  
14:56:41 13 You may answer it.

14:56:43 14 THE WITNESS: It was a -- you know, initially a  
14:56:48 15 possible violent mental case that was possibly armed.

14:56:51 16 BY MR. HENNESSEY:

14:56:52 17 Q Okay. So you described it earlier as a  
14:56:54 18 high-primary call, correct?

14:56:57 19 MR. SHERMAN: Objection. Misstates his  
14:56:59 20 testimony.

14:56:59 21 BY MR. HENNESSEY:

14:57:00 22 Q Do you recall referring to this incident as a  
14:57:02 23 high-priority call?

14:57:03 24 A I remember calling it a priority call, yes.

14:57:06 25 Q Well, how would you describe it today? With

14:57:10 1 what you knew from this, you know, armed mental  
14:57:13 2 patient --  
14:57:13 3 A That's --  
14:57:13 4 Q -- with a history of violence, where would that  
14:57:15 5 fall on the scale of priorities?  
14:57:19 6 A That's a higher priority --  
14:57:19 7 MR. SHERMAN: Objection. Asked and answered.  
14:57:21 8 Go ahead.  
14:57:21 9 BY MR. HENNESSEY:  
14:57:22 10 Q It would be called a higher priority, correct?  
14:57:26 11 A Yes.  
14:57:26 12 Q So why wouldn't your video unit be turned on?  
14:57:31 13 MR. SHERMAN: Objection. Argumentative.  
14:57:31 14 Go ahead.  
14:57:32 15 THE WITNESS: It didn't occur to me to turn it  
14:57:32 16 on.  
14:57:32 17 BY MR. HENNESSEY:  
14:57:33 18 Q You indicated that you use your videos or you  
14:57:34 19 have been trained to use your videos to capture -- when  
14:57:41 20 you believed you would be detain- -- you would be  
14:57:45 21 detaining or capturing somebody and there may be  
14:57:49 22 violence, words to that effect. Do you remember saying  
14:57:51 23 that?  
14:57:51 24 MR. SHERMAN: Objection. Misstates.  
14:57:53 25 Go ahead.

14:57:53 1 THE WITNESS: Yes.

14:57:54 2 BY MR. HENNESSEY:

14:57:54 3 Q Did you believe that you were responding to

14:57:56 4 that type of situation on September 3rd, 2008, based

14:58:01 5 primarily on the 911 call or dispatch information you

14:58:05 6 had before you pulled up to the area of 13252 Barnett

14:58:10 7 Way?

14:58:11 8 MR. SHERMAN: Compound.

14:58:12 9 You may answer.

14:58:13 10 THE WITNESS: Yes.

14:58:13 11 BY MR. HENNESSEY:

14:58:14 12 Q Then why didn't you turn your video camera on?

14:58:17 13 MR. SHERMAN: Objection. Asked and answered;

14:58:18 14 argumentative.

14:58:19 15 You can answer it one last time.

14:58:21 16 THE WITNESS: Again, it didn't occur to me at

14:58:23 17 the time.

14:58:23 18 BY MR. HENNESSEY:

14:58:23 19 Q Well, it did occur to you to turn on your audio

14:58:27 20 recording device, didn't it? It occurred to you, true?

14:58:31 21 MR. SHERMAN: Objection. Vague.

14:58:32 22 THE WITNESS: At what point?

14:58:33 23 BY MR. HENNESSEY:

14:58:34 24 Q At any point in time. From the time that you

14:58:36 25 got out of your car on September 3rd, 2008, until the

14:58:39 1 time that you deployed a taser device?

14:58:43 2 A Yes.

14:58:44 3 Q When did it occur to you to turn on your

14:58:48 4 microphone on your holster?

14:58:50 5 A When we were having difficulty subduing

14:58:54 6 Mr. Tran and I believed that I was going to have to

14:58:56 7 deploy my taser.

14:58:58 8 Q Okay. So what did you do to turn on your

14:59:00 9 microphone on your holster?

14:59:02 10 A I pressed the switch that was on the recorder

14:59:07 11 that was on my belt, but it did not activate the camera.

14:59:11 12 Q How do you know?

14:59:12 13 A Because there was no vibration and there was no

14:59:14 14 recording later on.

14:59:15 15 Q Did you check?

14:59:16 16 A Yes.

14:59:16 17 Q Okay. Has that ever happened to you before

14:59:24 18 where you attempted to turn your microphone on and it

14:59:27 19 just didn't work?

14:59:27 20 A Yes.

14:59:28 21 Q How many times, prior to September 3rd of 2008,

14:59:31 22 had that happened?

14:59:32 23 MR. SHERMAN: Objection. Relevancy;

14:59:33 24 materiality; you may -- it's overbroad; vague and

14:59:33 25 ambiguous.

14:59:36 1 You may answer, of course.

14:59:37 2 THE WITNESS: Numerous times.

14:59:38 3 BY MR. HENNESSEY:

14:59:39 4 Q Had you ever brought it to the attention of

14:59:41 5 anybody in a supervisorial role that your microphone did

14:59:43 6 not appear to be functioning properly?

14:59:45 7 A I wouldn't know if it was a problem with the

14:59:48 8 microphone or if it was a problem with the system.

14:59:50 9 Q Did you ever bring it to anybody's attention

14:59:52 10 that you were having a problem with your system

14:59:55 11 activating your video and/or audio recording devices?

14:59:57 12 MR. SHERMAN: Objection. Relevancy;

14:59:59 13 materiality.

15:00:01 14 You may answer.

15:00:01 15 THE WITNESS: Yes.

15:00:02 16 BY MR. HENNESSEY:

15:00:02 17 Q Prior to September 3rd, how did you do that?

15:00:02 18 THE REPORTER: Can you guys slow down.

15:00:02 19 THE WITNESS: Sorry.

15:00:02 20 MR. HENNESSEY: I'm sorry.

15:00:02 21 BY MR. HENNESSEY:

15:00:04 22 Q How did you bring it to anybody's attention

15:00:06 23 prior to September 3rd of 2008, that you appeared to

15:00:08 24 have some difficulties with your recording devices?

15:00:11 25 A It was an issue that was common with other

15:00:13 1 officers who had talked to their supervisors. I, in  
15:00:18 2 turn, had talked to mine on several occasions, depending  
15:00:21 3 on who the supervisor was at the time, that I was having  
15:00:24 4 issues with the microphones activating the cameras  
15:00:26 5 depending on how far away you were.

15:00:28 6 Q Did you ever put this in writing to anybody?

15:00:31 7 MR. SHERMAN: Objection. Materiality;  
15:00:31 8 relevancy.

15:00:33 9 You may answer.

15:00:35 10 THE WITNESS: Not that I can recall.

15:00:35 11 BY MR. HENNESSEY:

15:00:36 12 Q Do you remember sending an e-mail, a text  
15:00:39 13 message, a twitter, a -- any form of communication in  
15:00:43 14 writing to anybody in the Garden Grove Police Department  
15:00:44 15 saying that you were having problems with your recording  
15:00:47 16 devices, prior to September 3rd of 2008?

15:00:49 17 MR. SHERMAN: Same objections.

15:00:50 18 You may answer.

15:00:51 19 THE WITNESS: Not that I can recall, no.

15:00:52 20 BY MR. HENNESSEY:

15:00:56 21 Q So you attempted to turn your belt microphone  
15:01:04 22 on at some point in time while you were in the yard at  
15:01:09 23 13252 Barnett Way, true?

15:01:19 24 A Yes.

15:01:19 25 Q Okay. And the specific actions you made were,

15:06:44 1 Go ahead.

15:06:45 2 THE WITNESS: I didn't know.

15:06:46 3 BY MR. HENNESSEY:

15:06:46 4 Q Okay. Were you communicating with

15:06:49 5 Officer Karschamroon, who was at the scene, while you

15:06:51 6 were pulling up?

15:06:53 7 MR. SHERMAN: Objection. Vague and ambiguous

15:06:54 8 as to the word "communicating."

15:06:54 9 BY MR. HENNESSEY:

15:06:56 10 Q Prior to the time you tasered him. Were you

15:06:59 11 communicating with Officer Karschamroon while you pulled

15:07:01 12 up to the house?

15:07:03 13 A From the point that I pulled up until the point

15:07:05 14 that I tased him?

15:07:07 15 Q Yes.

15:07:07 16 A Yes.

15:07:08 17 Q Okay. Was any of those conversations picked up

15:07:11 18 on any recording device that you're aware of?

15:07:13 19 A No.

15:07:14 20 Q So you came into a situation -- when you left

15:07:22 21 your police car, you were concerned of potential having

15:07:26 22 gunfire open up, true?

15:07:28 23 A Yes.

15:07:28 24 Q Okay. So this would be the highest priority

15:07:33 25 call that you would be responding to, true?

15:07:35 1 MR. SHERMAN: Objection. Argumentative; vague  
15:07:38 2 and ambiguous.

15:07:38 3 THE WITNESS: Yes.

15:07:38 4 BY MR. HENNESSEY:

15:07:41 5 Q Exactly the type of call that you've been  
15:07:43 6 trained to activate your video device for, true?

15:07:47 7 A Yes.

15:07:47 8 Q Okay. And what efforts, if any, did you make  
15:07:52 9 to activate your video recording device as you pulled up  
15:07:56 10 to 13252 Barnett Way?

15:07:59 11 MR. SHERMAN: Objection. Relevancy;  
15:08:01 12 materiality.

15:08:01 13 Go ahead.

15:08:02 14 THE WITNESS: From my car, I made none.

15:08:04 15 BY MR. HENNESSEY:

15:08:07 16 Q Okay. Do you have the ability to erase a  
15:08:09 17 video?

15:08:10 18 A No.

15:08:10 19 Q Are you sure?

15:08:13 20 A Not that I'm aware of.

15:08:14 21 MR. SHERMAN: Objection. Argumentative.

15:08:16 22 You can answer.

15:08:17 23 BY MR. HENNESSEY:

15:08:18 24 Q What happens with the hard drives once the --  
15:08:20 25 what happens with the hard drives, to your knowledge, at

15:08:22 1 the end of the day, how is the information stored?

15:08:26 2 MR. SHERMAN: Objection. Calls for possible  
15:08:28 3 speculation --

15:08:28 4 BY MR. HENNESSEY:

15:08:28 5 Q If you know.

15:08:29 6 MR. SHERMAN: Hang on. Assumes facts not in  
15:08:32 7 evidence; lacks foundation.

15:08:32 8 You may answer.

15:08:33 9 THE WITNESS: I don't know.

15:08:34 10 BY MR. HENNESSEY:

15:08:35 11 Q Have you ever had an occasion yourself to  
15:08:37 12 download information from your unit's video?

15:08:40 13 A No.

15:08:41 14 MR. SHERMAN: Has he ever downloaded the --  
15:08:41 15 okay.

15:08:45 16 MR. HENNESSEY: Has he ever personally had an  
15:08:47 17 occasion to download information.

15:08:54 18 THE WITNESS: No.

15:08:54 19 BY MR. HENNESSEY:

15:08:55 20 Q After this incident, did you ultimately have  
15:08:57 21 your microphone replaced or serviced to correct whatever  
15:09:03 22 error existed on 9/3/08?

15:09:03 23 A I don't recall.

15:09:04 24 Q Would that have been through -- if it had been  
15:09:08 25 done, would that have been through a written request?

15:11:23 1 BY MR. HENNESSEY:

15:11:24 2 Q What did you understand was the nature of the  
15:11:26 3 911 call that caused you to be dispatched to  
15:11:30 4 13252 Barnett Way?

15:11:31 5 A The nature of the call was a possible mental  
15:11:35 6 case where the subject in question was described as,  
15:11:39 7 quote, crazy.

15:11:40 8 Q Okay. And as a law enforcement officer -- or  
15:11:43 9 what was your state of mind on September 3rd, 2008, as  
15:11:49 10 to what that meant? What was in your mind, what was  
15:11:54 11 your state of mind as to what "potential mental case,"  
15:12:04 12 "crazy"?

15:12:04 13 MR. SHERMAN: Objection. Vague and ambiguous.

15:12:04 14 What are you asking him? What does "crazy"  
15:12:04 15 mean to him?

15:12:04 16 BY MR. HENNESSEY:

15:12:04 17 Q Well, have you ever heard of Welfare and  
15:12:06 18 Institutions Code 5150? Are you aware of what that it?

15:12:07 19 A Yes.

15:12:07 20 Q What do you understand Welfare and Institutions  
15:12:10 21 Code 5150 to mean?

15:12:11 22 A It deals with subjects that are gravely  
15:12:14 23 disabled, a danger to themselves, a danger to others,  
15:12:18 24 normally as a result of a mental condition.

15:12:22 25 Q Did you hear a call going out for a possible

15:18:49 1 if 20 hours was dedicated to CPR, what was the other  
15:18:53 2 20 hours dedicated to?

15:18:54 3 A To the application of general first aid.

15:18:57 4 Q Did that include defibrillators? Do you know  
15:19:01 5 what a defibrillator is?

15:19:03 6 A I do.

15:19:03 7 Q Do you carry -- and back in February of 2008,  
15:19:07 8 did you carry a defibrillator in your unit?

15:19:10 9 A No.

15:19:10 10 Q Do you know whether any responding officer,  
15:19:13 11 El-Farra, Karschamroon, had a defibrillator with them  
15:19:17 12 when they responded? If you personally know.

15:19:19 13 A I personally know that none of the units had  
15:19:24 14 them.

15:19:24 15 Q Okay. In relation to any specific education  
15:19:34 16 that you received in the Americans -- compliance with  
15:19:36 17 the Americans with Disabilities Act, in relation to the  
15:19:39 18 mentally ill, what have you been trained?

15:19:42 19 A I have been trained that in dealing with  
15:19:45 20 subjects with mental impairments, that they can be prone  
15:19:49 21 to violence. And that our role as responders in dealing  
15:19:53 22 with such persons is to attempt to deescalate the  
15:19:58 23 situation. Try and keep them as calm as possible using  
15:20:01 24 a calm and soft demeanor.

15:20:07 25 Q Okay. Prior to the time that you deployed your

15:21:17 1 him, were you told that Mr. Tran complied with anything?

15:21:20 2 A No.

15:21:20 3 Q Okay. Did you ask?

15:21:21 4 A No.

15:21:22 5 Q Why not?

15:21:24 6 MR. SHERMAN: Objection. Argumentative;

15:21:25 7 irrelevant.

15:21:26 8 You may answer.

15:21:27 9 THE WITNESS: Because at the time I was

15:21:28 10 concerned with the fact that he was not compliant at

15:21:31 11 that second that I arrived.

15:21:33 12 BY MR. HENNESSEY:

15:21:34 13 Q And you went hands-on with Mr. Tran, correct?

15:21:36 14 MR. SHERMAN: Objection. Vague and ambiguous;

15:21:39 15 scope and time.

15:21:40 16 You may answer.

15:21:40 17 BY MR. HENNESSEY:

15:21:41 18 Q Prior to the time you deployed your taser.

15:21:43 19 A Yes.

15:21:43 20 Q Okay. How did you go hands-on with him?

15:21:45 21 A I had grabbed his left wrist and tried to bring

15:21:51 22 it down to the lower portion of his back so that we

15:21:54 23 could try and handcuff him. When I was initially unable

15:21:58 24 to pull it away from his right hand, I applied pressure

15:22:02 25 on his left wrist, trying to find a pressure point to

15:22:06 1 use as a pain compliance hold to try and get him to move  
15:22:11 2 his arm.

15:22:13 3 Q Okay. Describe the pain compliance hold that  
15:22:15 4 you had been trained on, prior to September 3rd of 2008.

15:22:19 5 MR. SHERMAN: Objection. Vague.

15:22:20 6 You want him to describe what he did or what he  
15:22:22 7 was trained?

15:22:23 8 MR. HENNESSEY: Trained.

15:22:23 9 BY MR. HENNESSEY:

15:22:25 10 Q What type of pain-compliance maneuvers had you  
15:22:27 11 been trained on prior to September 3rd of 2008?

15:22:30 12 A I had been trained on several. Many of them  
15:22:34 13 involved bending the hand or wrist in a particular  
15:22:37 14 direction. Others involved applying pressure to  
15:22:40 15 pressure points to gain compliance in that fashion.

15:22:50 16 Q Okay.

15:22:50 17 THE VIDEOGRAPHER: Counsel, we have less than a  
15:22:50 18 minute.

15:22:50 19 MR. HENNESSEY: Okay. If you want to change  
15:22:50 20 the tape, that's fine.

15:22:50 21 MR. SHERMAN: What, we're running out of tape?

15:22:50 22 MR. HENNESSEY: I believe he said we have one  
15:22:52 23 minute left.

15:22:52 24 THE VIDEOGRAPHER: This now marks the end of  
15:22:55 25 tape one of the deposition of Officer Richard Gendreau.

16:04:22 1 taught you how to use the taser?

16:04:24 2 MR. SHERMAN: This would be --

16:04:25 3 MR. HENNESSEY: Prior to September 3rd, 2008.

16:04:27 4 MR. SHERMAN: Thank you.

16:04:28 5 THE WITNESS: Prior to, I recall receiving

16:04:30 6 training from Sergeant Bowers.

16:04:33 7 BY MR. HENNESSEY:

16:04:33 8 Q And how do you spell that?

16:04:35 9 A B-O-W-E-R-S.

16:04:37 10 Q Okay. Do you recall receiving training from

16:04:39 11 any other officer of the Garden Grove Police Department,

16:04:42 12 prior to September 3rd, 2008, on deployment of a taser?

16:04:45 13 A Yes.

16:04:45 14 Q And who was that?

16:04:47 15 A That was Sergeant Lux, L-U-X.

16:04:50 16 Q Okay. And anybody else, prior to September 3rd

16:04:53 17 of 2008, if you recall?

16:04:55 18 A I don't know if it was before, but I've also

16:04:58 19 received instruction from Lieutenant Boddy, B-O-D-D-Y.

16:05:03 20 Q Okay. When you say you don't recall whether it

16:05:06 21 was before, are you talking about before September 3rd

16:05:07 22 of 2008 or after, in relation to Lieutenant Boddy?

16:05:11 23 A I don't recall if it was before or after the

16:05:14 24 date of Mr. Tran's incident.

16:05:16 25 Q Okay. Why don't we -- and that's fine, but I'm

16:13:11 1 people who may be under the influence of certain drugs?

16:13:14 2 A Yes.

16:13:15 3 Q Was -- were you taught that it was also a

16:13:20 4 potential for people who are suffering from mental

16:13:23 5 illness? Was that also brought to your attention?

16:13:26 6 MR. SHERMAN: Objection. Vague.

16:13:27 7 You may answer.

16:13:28 8 THE WITNESS: I don't recall if it was or not.

16:13:30 9 BY MR. HENNESSEY:

16:13:38 10 Q Okay. Did you receive any type of a

16:13:41 11 certification in the use of an X26 TASER, prior to

16:13:44 12 September 3rd of 2008?

16:13:46 13 A No, I don't believe so.

16:13:48 14 Q Okay. Meaning, is there a completion of any

16:13:53 15 course that results in you receiving any type of

16:13:58 16 paperwork indicating proficiency in the X26, is there

16:14:00 17 any type of -- does that exist at the Garden Grove

16:14:03 18 Police Department, to your knowledge?

16:14:04 19 A Not to my knowledge.

16:14:05 20 Q Is there any type of continuing training

16:14:11 21 requirements since June 2007 on the X- -- between

16:14:16 22 June 2007 and September 2008, do you remember any

16:14:19 23 continuing training on the X- -- on the deployment of

16:14:24 24 the X26 model?

16:14:26 25 MR. SHERMAN: Objection. Vague.

16:14:27 1 You may answer.

16:14:28 2 THE WITNESS: Not that I can -- pardon me. Not

16:14:31 3 that I can recall, no.

16:14:32 4 BY MR. HENNESSEY:

16:14:34 5 Q Do you ever remember receiving any written

16:14:35 6 materials during any of Sergeant Bowers' or

16:14:37 7 Sergeant Lux's training on the X26?

16:14:41 8 A Not that I can recall, no.

16:14:42 9 Q Have you looked for any since this case began?

16:14:46 10 A No.

16:14:47 11 Q Okay. Do you remember seeing (sic) any

16:15:08 12 training from anybody from TASER International at any

16:15:12 13 time prior to September of 2008?

16:15:16 14 MR. SHERMAN: Objection. Vague.

16:15:16 15 BY MR. HENNESSEY:

16:15:18 16 Q Any trainers from outside the Garden Grove

16:15:22 17 Police Department?

16:15:22 18 A None that I can recall, no.

16:15:24 19 Q Okay. Did you go to any conferences or

16:15:29 20 anything in Arizona or any other locations that

16:15:31 21 specifically address the X26 model TASER?

16:15:35 22 A No.

16:15:35 23 Q Is it your testimony that the only formal

16:15:40 24 training you received on the X26 TASER came from -- I'm

16:15:46 25 sorry, prior to September 3rd of 2008, came from

16:37:01 1 Q And that certain clothing would also indicate  
16:37:04 2 that somebody's not armed, correct?  
16:37:08 3 A Yes.  
16:37:08 4 Q And in this case you just don't have any idea  
16:37:10 5 one way or the other?  
16:37:11 6 MR. SHERMAN: Objection. Vague. One way or  
16:37:14 7 the other about what?  
16:37:15 8 MR. HENNESSEY: About how he was dressed,  
16:37:16 9 whether it was consistent with concealing weapons or  
16:37:17 10 anything like that.  
16:37:17 11 BY MR. HENNESSEY:  
16:37:17 12 Q True?  
16:37:20 13 A I'm sorry, I --  
16:37:21 14 Q Do you recall anything about the manner in  
16:37:23 15 which he was dressed that caused you to have concerns  
16:37:26 16 that he may be concealing a weapon under his clothing?  
16:37:29 17 A Not that I can recall.  
16:37:32 18 Q Do you recall ever having a conversation with  
16:37:35 19 Officer Karschamroon (pronouncing) -- Karschamroon  
16:37:37 20 (pronouncing) as to whether he had patted down Mr. Tran,  
16:37:39 21 prior to the time you deployed a taser on him?  
16:37:44 22 A No.  
16:37:44 23 Q When you say "no," are you saying that you did  
16:37:47 24 not have that conversation or do not recall having that  
16:37:50 25 conversation?

16:37:50 1 A I do not recall having that conversation.

16:37:51 2 Q Would that be something that you would  
16:37:54 3 ordinarily ask a partner, whether this person's been  
16:37:58 4 patted down for weapons?

16:37:59 5 A Yes.

16:37:59 6 Q Okay. Is there any reason that you can think  
16:38:00 7 of why you wouldn't ask Officer Karschamroon that type  
16:38:04 8 of question in this particular type of situation where  
16:38:06 9 there had been an indication of weapons in the call?

16:38:09 10 MR. SHERMAN: Objection. Argumentative;  
16:38:13 11 assumes facts not in evidence; calls for possible  
16:38:13 12 speculation; compound.

16:38:14 13 You may answer.

16:38:15 14 THE WITNESS: Yes.

16:38:16 15 BY MR. HENNESSEY:

16:38:16 16 Q What was the reason why you may not ask  
16:38:20 17 Officer Kar- -- why wouldn't you ask  
16:38:23 18 Officer Karschamroon whether Mr. Tran had been patted  
16:38:27 19 down, prior to deploying a taser on him?

16:38:29 20 A When I arrived on scene, I saw that  
16:38:33 21 Officer Karschamroon had both hands engaged on the  
16:38:35 22 subject's arms and he told me that he tensed up -- that  
16:38:36 23 he was tensed up and that he couldn't get Mr. Tran's  
16:38:39 24 hands behind his back into a handcuffing position.

16:38:42 25 At that point that became my sole focus was to

16:38:45 1 gain control of -- further control of Mr. Tran's hands  
16:38:50 2 and not necessarily whether or not he had been patted  
16:38:53 3 down yet.

16:38:54 4 Q Were you concerned about weapons?

16:38:54 5 A Yes.

16:38:55 6 Q Okay. Did you ask Officer Karschamroon whether  
16:38:55 7 he had done anything to determine whether Mr. Tran had  
16:38:58 8 any weapons?

16:38:59 9 A No.

16:38:59 10 Q Why not?

16:39:00 11 MR. SHERMAN: Objection. Argumentative;  
16:39:02 12 irrelevant.

16:39:03 13 You may answer.

16:39:04 14 THE WITNESS: Again, my focus became gaining  
16:39:07 15 control of his hands so that he would not be able to  
16:39:16 16 reach for any potential weapons.

16:39:16 17 BY MR. HENNESSEY:

16:39:16 18 Q Okay. And you did gain control of his hands,  
16:39:16 19 correct?

16:39:16 20 MR. SHERMAN: Objection. Vague and ambiguous;  
16:39:17 21 overbroad in both scope and time.

16:39:17 22 BY MR. HENNESSEY:

16:39:18 23 Q Prior to the time you tasered him, you did gain  
16:39:21 24 control over his hands, correct?

16:39:23 25 MR. SHERMAN: Same objections.

16:39:23 1 THE WITNESS: We had some control.

16:39:25 2 BY MR. HENNESSEY:

16:39:25 3 Q Okay. What does that mean?

16:39:26 4 A It meant that Officer Karschamroon was holding

16:39:26 5 his wrists, but that doesn't diminish the possibility to

16:39:31 6 being able to break away and swing his arms.

16:39:33 7 Q Okay. Had Officer Karschamroon indicated that

16:39:37 8 -- that anything like that had ever happened yet?

16:39:39 9 A No.

16:39:39 10 Q Okay. Did you see Mr. Tran make any movements

16:39:42 11 as if he was going to hit Officer Karschamroon?

16:39:46 12 MR. SHERMAN: Vague.

16:39:47 13 You may answer.

16:39:47 14 THE WITNESS: No.

16:39:48 15 BY MR. HENNESSEY:

16:39:48 16 Q Did he move his body in any fashion that led

16:39:51 17 you to believe that he was about to run?

16:39:53 18 MR. SHERMAN: Objection. Vague and ambiguous.

16:39:54 19 BY MR. HENNESSEY:

16:39:55 20 Q Prior to the time you tasered him.

16:39:57 21 MR. SHERMAN: It's overbroad.

16:39:58 22 You may answer.

16:40:00 23 THE WITNESS: No.

16:40:00 24 BY MR. HENNESSEY:

16:40:01 25 Q Okay. Do you remember Mr. Tran doing anything

16:43:12 1 BY MR. HENNESSEY:

16:43:12 2 Q Was -- did Mr. Tran push you at all?

16:43:16 3 THE WITNESS: No.

16:43:15 4 MR. SHERMAN: Objection. Vague.

16:43:17 5 BY MR. HENNESSEY:

16:43:17 6 Q Okay. Did he try to kick you?

16:43:18 7 A No.

16:43:19 8 Q Did he try to hit you?

16:43:21 9 A No.

16:43:22 10 Q Okay. His appearance was that of somebody who appeared to be sick, correct?

16:43:25 11 MR. SHERMAN: Objection. Vague.

16:43:28 13 BY MR. HENNESSEY:

16:43:29 14 Q I mean, you're saying that he was growling, drooling from the mouth, fists balled up behind his head; he had a very blank stare on his face, didn't he?

16:43:31 15 A Yes.

16:43:41 18 Q He didn't seem to understand what you were saying to him, did he?

16:43:43 19 MR. SHERMAN: Objection. Compound;

16:43:45 20 argumentative; vague and ambiguous.

16:43:46 22 THE WITNESS: I don't know if he was

16:43:46 23 understanding.

16:43:48 24 BY MR. HENNESSEY:

16:43:48 25 Q Did he appear to you to understand the

16:43:50 1 directions that you were giving him?

16:43:51 2 A He didn't appear that he wasn't understanding  
16:43:54 3 them. It didn't go either way.

16:43:57 4 Q Did you say during your Internal Affairs  
16:43:57 5 interview that Mr. Tran did not appear to understand  
16:44:02 6 anything that you were saying, did you say that?

16:44:03 7 A I did. And I also stated that he didn't give  
16:44:06 8 any indication that he did not understand.

16:44:14 9 Q Okay. So you acknowledge that you did say that  
16:44:14 10 on the Internal Affairs, that he did not appear to  
16:44:15 11 understand anything you were saying, you did say those  
16:44:18 12 words, correct?

16:44:18 13 MR. SHERMAN: Objection. Argumentative. The  
16:44:19 14 document speaks for itself. Or at least the audio does.  
16:44:21 15 I don't know how accurate the document is, but I'm sure  
16:44:24 16 it's fairly accurate.

16:44:24 17 BY MR. HENNESSEY:

16:44:25 18 Q Do you recall saying words to that effect?

16:44:27 19 MR. SHERMAN: Objection. Asked and answered;  
16:44:27 20 argumentative.

16:44:28 21 Go ahead. You can answer.

16:44:30 22 THE WITNESS: Again, I recall saying that. And  
16:44:32 23 I also recall stating that he also gave no indication  
16:44:34 24 that he did not understand what I was saying.

16:44:34 25 ///

16:44:35 1 BY MR. HENNESSEY:

16:44:35 2 Q What about his actions led you to believe that  
16:44:37 3 he did understand what you were saying? What did he do  
16:44:41 4 that led you to believe he did understand what you were  
16:44:45 5 saying?

16:44:45 6 A Nothing. He wasn't complying with anything we  
16:44:47 7 were telling him.

16:44:47 8 Q How do you know what he did -- do you know  
16:44:49 9 whether he complied with one order Officer Karschamroon  
16:44:50 10 gave him before you came there?

16:44:52 11 MR. SHERMAN: Objection. Asked and answered.

16:44:54 12 THE WITNESS: No.

16:44:55 13 BY MR. HENNESSEY:

16:44:55 14 Q Because you never asked.

16:44:57 15 MR. SHERMAN: Objection. Argumentative; asked  
16:45:00 16 and answered.

16:45:00 17 BY MR. HENNESSEY:

16:45:02 18 Q What observation did you make that led you to  
16:45:05 19 believe that Mr. Tran did understand your orders?

16:45:09 20 MR. SHERMAN: Objection. Asked and answered.

16:45:12 21 Go ahead.

16:45:13 22 THE WITNESS: None.

16:45:16 23 BY MR. HENNESSEY:

16:45:16 24 Q Was there anything about his demeanor or  
16:45:18 25 behavior that led you to believe he did not understand

16:46:36 1 BY MR. HENNESSEY:

16:46:36 2 Q Okay. Did you go behind Mr. Tran and place

16:46:44 3 both your hands on his arms to try to control his left

16:46:49 4 arm as you've previously described?

16:46:51 5 MR. SHERMAN: Objection. Vague as to "behind."

16:46:54 6 Go ahead.

16:46:54 7 THE WITNESS: Not fully behind, I was more to

16:46:57 8 the side.

16:46:57 9 BY MR. HENNESSEY:

16:46:57 10 Q Okay. So you were in front of -- you stood

16:47:00 11 directly in front of him, you made the observations of

16:47:03 12 his hands being balled up into fists, and then you moved

16:47:08 13 to his side in order to grab both of his hands?

16:47:10 14 A Yes.

16:47:10 15 MR. SHERMAN: Objection. Misstates.

16:47:11 16 BY MR. HENNESSEY:

16:47:12 17 Q Is that the order that it happened in?

16:47:13 18 A I'm sorry, can you repeat that.

16:47:15 19 Q You indicated that you were standing directly

16:47:18 20 in front of Mr. Tran when you observed that his hands --

16:47:22 21 his fingers were not interlaced and that his fists (sic)

16:47:25 22 were bundled up into fists; those observations were made

16:47:30 23 standing directly in front of him, correct?

16:47:30 24 MR. SHERMAN: Objection. Asked and answered.

16:47:30 25 You may answer it again.

16:53:54 1 A Maybe 30 to 60 seconds.

16:53:57 2 Q Could it have been less than that?

16:54:00 3 MR. SHERMAN: Objection. Argumentative.

16:54:02 4 BY MR. HENNESSEY:

16:54:02 5 Q When you say "30 to 60 seconds," where are you coming up with that number?

16:54:06 7 A With looking at all of my time to be able to observe all of the symptoms that I had seen in Mr. Tran,

16:54:11 8 trying to talk to him to get him to comply, in addition

16:54:14 9 to -- with -- my time from exiting my car to get up to

16:54:26 10 Mr. Tran and Officer Karschamroon. My attempt to get

16:54:26 11 his hands behind his back, physically, and then another

16:54:29 12 attempt, after that, to go back in front of him and try

16:54:32 13 to talk to him again.

16:54:33 15 Q From your observations of Officer Karschamroon,

16:54:35 16 did he seem to be in a position to observe you placing

16:54:38 17 your hands on Mr. Tran?

16:54:40 18 MR. SHERMAN: Objection.

16:54:40 19 BY MR. HENNESSEY:

16:54:41 20 Q From where you observed him to be, did he seem

16:54:43 21 to be in a position to be able to see you placing your

16:54:47 22 hands on Mr. Tran?

16:54:48 23 MR. SHERMAN: Objection. Asked and answered;

16:54:49 24 calls for possible speculation; assumes facts not in

16:54:52 25 evidence; lacks foundation.

17:03:07 1 jogged over to his location.

17:03:09 2 Q Okay.

17:03:15 3 A But I wasn't more than a few steps from my car

17:03:19 4 when I started jogging.

17:03:21 5 Q Okay. Did you see an elderly man and woman

17:03:23 6 come out of the house, prior to the time you tasered

17:03:26 7 Mr. Tran?

17:03:27 8 A I could see that they were near the front door.

17:03:29 9 Q Did you also see a small child near the front

17:03:33 10 door, prior to the time that you tasered Mr. Tran?

17:03:35 11 A I could see that he was also by the front door.

17:03:38 12 Q Okay. Did you make any efforts whatsoever to

17:03:40 13 attempt to get his mother or father over to try to calm

17:03:43 14 Mr. Tran down?

17:03:44 15 A No.

17:03:44 16 MR. SHERMAN: Objection. Relevancy;

17:03:47 17 materiality.

17:03:47 18 BY MR. HENNESSEY:

17:03:48 19 Q Okay. Why not?

17:03:49 20 MR. SHERMAN: Argumentative now.

17:03:50 21 Go ahead.

17:03:50 22 THE WITNESS: Again, because I did not know

17:03:53 23 whether or not he had any weapons on him. Also, I

17:03:57 24 didn't want to put them in any potential undue danger.

17:04:00 25 ///

17:05:42 1 A Yes.

17:05:43 2 Q Okay. How long did that go on for?

17:05:45 3 MR. SHERMAN: Objection. Asked and answered.

17:05:45 4 Go ahead.

17:05:47 5 THE WITNESS: Approximately five to ten

17:05:48 6 seconds.

17:05:48 7 BY MR. HENNESSEY:

17:05:49 8 Q Okay. How long did you have your hands on

17:05:53 9 Mr. Tran's body, total, prior to the time you tasered

17:06:00 10 him?

17:06:00 11 A Again, approximately five to ten seconds.

17:06:00 12 Q Okay. And what was happening during that five

17:06:02 13 to ten seconds? Describe everything you did with your

17:06:05 14 hands, or any other part of your body, to Mr. Tran

17:06:08 15 during that five to ten seconds.

17:06:10 16 MR. SHERMAN: Objection. Compound; vague.

17:06:12 17 Go ahead.

17:06:13 18 THE WITNESS: I, again, moved to his left side,

17:06:15 19 placed both my hands around his left wrist, I attempted

17:06:18 20 to apply pressure to the interior of his wrist, hoping

17:06:22 21 that that pain would cause him to loosen his arm and

17:06:25 22 move it in the direction that I want -- that I was

17:06:26 23 pulling.

17:06:27 24 BY MR. HENNESSEY:

17:06:27 25 Q Okay. Were you able to get any movement?

17:13:29 1 A Correct.

17:13:29 2 Q He never advanced on you in an aggressive

17:13:33 3 fashion, correct?

17:13:34 4 A Correct.

17:13:34 5 Q He never attempted to do anything that in your

17:13:37 6 mind appeared to be aggressive towards

17:13:39 7 Officer Karschamroon, correct?

17:13:40 8 MR. SHERMAN: Objection. Vague; misstates

17:13:42 9 prior testimony.

17:13:43 10 Go ahead.

17:13:44 11 THE WITNESS: No.

17:13:44 12 BY MR. HENNESSEY:

17:13:44 13 Q Okay. He didn't appear to make any motions as

17:13:47 14 if he was going to try to flee while you were standing

17:13:50 15 in front of him warning of him about using the taser,

17:13:53 16 correct?

17:13:53 17 MR. SHERMAN: Objection. Asked and answered.

17:13:54 18 Go ahead.

17:13:55 19 THE WITNESS: No.

17:13:55 20 BY MR. HENNESSEY:

17:13:57 21 Q So that was the only available way of subduing

17:14:00 22 him, in your mind, was to taser him at that point,

17:14:04 23 correct?

17:14:05 24 A Yes.

17:14:06 25 Q Why did you choose the leg?

17:17:00 1 BY MR. HENNESSEY:

17:17:01 2 Q Iraq, Afghanistan, both?

17:17:04 3 A I don't know.

17:17:05 4 Q Okay. Why didn't you back off and wait for

17:17:11 5 other officers to arrive?

17:17:13 6 MR. SHERMAN: Objection. Relevancy;

17:17:14 7 argumentative; materiality.

17:17:16 8 Go ahead.

17:17:16 9 THE WITNESS: Because if we let go of his

17:17:18 10 hand --

17:17:18 11 MR. SHERMAN: Did I say irrelevant?

17:17:18 12 Go ahead. No, you can answer.

17:17:20 13 THE WITNESS: If we let go of his hands, then

17:17:23 14 he had one handcuff with a free-swinging metal object on

17:17:26 15 his wrist.

17:17:26 16 BY MR. HENNESSEY:

17:17:27 17 Q But he had never swung or made any aggressive

17:17:30 18 moves towards either one of you up to that point in

17:17:33 19 time, had he?

17:17:33 20 MR. SHERMAN: Objection. Argumentative; asked

17:17:34 21 and answered; irrelevant; materiality.

17:17:35 22 Go ahead.

17:17:36 23 THE WITNESS: No, but essentially we would be

17:17:38 24 arming him to do so.

17:17:39 25 ///

18:13:27 1 argumentative.

18:13:28 2 Go ahead.

18:13:28 3 THE WITNESS: No, I've heard it explained as  
18:13:31 4 using the reasonable -- you know, a reasonable amount of  
18:13:32 5 force to --

18:13:32 6 BY MR. HENNESSEY:

18:13:33 7 Q Have you -- I'm sorry, go ahead.

18:13:34 8 A -- to gain control.

18:13:36 9 Q Have you been trained that you should use the  
18:13:39 10 least amount of force necessary consistent with the  
18:13:43 11 factual situation that you are faced with?

18:13:47 12 MR. SHERMAN: Objection. Asked and answered.

18:13:48 13 You may answer it.

18:13:48 14 THE WITNESS: Again, when you have several  
18:13:51 15 options that are perceived to be the same level of  
18:13:54 16 force, any one of them, you know, is considered a  
18:13:58 17 reasonable and is an available option to you.

18:13:59 18 BY MR. HENNESSEY:

18:14:00 19 Q At the time that you deployed your taser  
18:14:03 20 against Mr. Tran, he was not actively resisting in any  
18:14:07 21 fashion at that moment, was he?

18:14:09 22 MR. SHERMAN: Objection. Argumentative;  
18:14:11 23 incomplete hypothetical; assumes facts not in evidence;  
18:14:14 24 misstates prior testimony.

18:14:15 25 You may answer.

18:15:02 1 BY MR. HENNESSEY:

18:15:06 2 Q Okay. You did not see him do anything

18:15:08 3 aggressive towards Officer Karschamroon at the moment

18:15:10 4 you deployed the taser against him, correct?

18:15:12 5 MR. SHERMAN: Vague.

18:15:13 6 You may answer.

18:15:15 7 THE WITNESS: Correct.

18:15:16 8 BY MR. HENNESSEY:

18:15:16 9 Q You did not see him do anything aggressive

18:15:19 10 towards you at the moment you deployed the taser,

18:15:23 11 correct?

18:15:23 12 MR. SHERMAN: For some reason I want to say

18:15:25 13 these are asked and answered.

18:15:26 14 But go ahead.

18:15:27 15 THE WITNESS: No, sir.

18:15:28 16 BY MR. HENNESSEY:

18:15:28 17 Q Okay. Have you been trained to let a situation

18:15:31 18 play itself out without the use of force, if possible?

18:15:35 19 MR. SHERMAN: Objection. Vague and ambiguous.

18:15:36 20 BY MR. HENNESSEY:

18:15:37 21 Q Have you ever been trained in that role as a

18:15:39 22 police officer by anybody?

18:15:40 23 MR. SHERMAN: Objection. Vague and ambiguous;

18:15:42 24 incomplete hypothetical; irrelevant; argumentative;

18:15:47 25 immaterial.

18:27:20 1 one to two minutes after I had gone on scene.

18:27:23 2 BY MR. HENNESSEY:

18:27:23 3 Q If you had told Officer -- Sergeant Wagner that  
18:27:25 4 you arrived on scene at 1136 and called the fire  
18:27:29 5 department at 1138, is that consistent with the timing  
18:27:32 6 as you recall it?

18:27:33 7 A Yes.

18:27:34 8 Q And if Officer Wagner had indicated you  
18:27:38 9 requested a supervisor to respond at 1146, is that  
18:27:42 10 consistent or inconsistent with your recollection of the  
18:27:45 11 events?

18:27:47 12 A My recollection -- that would be inconsistent.

18:27:50 13 My recollection is that I asked for them at the same  
18:27:52 14 time.

18:27:52 15 Q Okay. So if in fact you called for a  
18:27:55 16 supervisor eight minutes later after the tasering  
18:27:58 17 incident, that's different than you remember, correct?

18:28:00 18 A Correct.

18:28:01 19 Q Okay. Do you remember approximately how much  
18:28:12 20 time passed from the time that you tasered Mr. Tran  
18:28:17 21 until the time that you first noticed a medical  
18:28:20 22 personnel was on scene?

18:28:22 23 A I would estimate it at maybe a minute to a  
18:28:28 24 minute and 15.

18:28:29 25 Q So you believe from the time of the tasering

18:41:26 1 MR. SHERMAN: Context.

18:41:26 2 THE REPORTER: What was that?

18:41:29 3 MR. SHERMAN: Context.

18:41:29 4 BY MR. HENNESSEY:

18:41:31 5 Q Did you tell Sergeant Bailey that he was not

18:41:34 6 pulling away from you?

18:41:36 7 MR. SHERMAN: Same objections.

18:41:38 8 THE WITNESS: Correct.

18:41:39 9 BY MR. HENNESSEY:

18:42:01 10 Q Did you ever hold your taser up in front of

18:42:05 11 Andy Tran's face to notify him that you had a weapon in

18:42:08 12 your hand?

18:42:09 13 MR. SHERMAN: Objection. Vague.

18:42:11 14 BY MR. HENNESSEY:

18:42:11 15 Q Did you ever display the weapon to him so that

18:42:14 16 he could see it?

18:42:15 17 A No.

18:42:16 18 Q Why not?

18:42:17 19 A I didn't feel it was necessary.

18:42:20 20 Q Why not?

18:42:21 21 MR. SHERMAN: Objection. Argumentative.

18:42:23 22 THE WITNESS: Because I was telling him that if

18:42:26 23 he didn't comply, I was going to have to tase him.

18:42:28 24 BY MR. HENNESSEY:

18:42:29 25 Q Okay. But you're not sure whether Andy Tran

18:44:07 1 understand the warning that you had given him? Were you  
18:44:11 2 concerned at all that he may not have understood the  
18:44:14 3 warning that you were attempting to give him by saying,  
18:44:19 4 I'm going to taser you?

18:44:20 5 MR. SHERMAN: Relevancy; materiality.

18:44:21 6 Go ahead.

18:44:21 7 THE WITNESS: That was a consideration.

18:44:21 8 BY MR. HENNESSEY:

18:44:23 9 Q Okay. So if it was a consideration, what, if  
18:44:23 10 anything, did you do to make sure that he understood the  
18:44:26 11 nature of the threat that you were making to him?

18:44:29 12 MR. SHERMAN: Objection. Calls for -- well,  
18:44:34 13 assumes facts not in evidence; calls for speculation;  
18:44:35 14 lacks foundation as to how he could be -- how he can  
18:44:38 15 ensure that someone understood something.

18:44:41 16 You may answer it if you can.

18:44:44 17 Speculation.

18:44:45 18 Go ahead.

18:44:45 19 THE WITNESS: I had made my decision based on  
18:44:45 20 the fact that he hadn't responded to anything that we  
18:44:48 21 had said to him, but still displayed the behavior that  
18:44:52 22 he did display. I didn't feel that it would be prudent  
18:44:56 23 to spend time trying to make sure that he understood it  
18:45:09 24 after I had given the warning several times.

18:45:09 25 ///

18:46:38 1 Q Okay. So he's on his back, his eyes were  
18:46:42 2 closed, he has a rapid pulse, but you didn't see any  
18:46:44 3 need for medical attention at that point in time?  
18:46:46 4 MR. SHERMAN: Objection. Vague and ambiguous;  
18:46:49 5 irrelevant; argumentative.  
18:46:52 6 THE WITNESS: I didn't believe there was any  
18:46:55 7 help I could provide to him, other than trying to make  
18:46:57 8 him more comfortable.  
18:46:59 9 BY MR. HENNESSEY:  
18:46:59 10 Q Okay. And how did you try to make him more  
18:47:01 11 comfortable?  
18:47:02 12 A We sat him up.  
18:47:03 13 Q Okay. You felt that made him more comfortable?  
18:47:05 14 MR. SHERMAN: Objection. Argumentative.  
18:47:05 15 You may answer.  
18:47:06 16 THE WITNESS: I believed it could have, yes.  
18:47:08 17 BY MR. HENNESSEY:  
18:47:08 18 Q Did you tell the Internal Affairs officer that  
18:47:11 19 Mr. Tran never seemed to understand what was being told  
18:47:16 20 to him? Ever.  
18:47:17 21 MR. SHERMAN: Objection. The document speaks  
18:47:19 22 for itself; foundation; speculation; vague and  
18:47:19 23 ambiguous.  
18:47:21 24 Go ahead.  
18:47:21 25 THE WITNESS: I said that he never gave any

1 indication that he understood --

2 THE REPORTER: I'm sorry --

3 THE WITNESS: -- whether or not -- I'm sorry.

4 THE REPORTER: Say that again. No, you.

5 THE WITNESS: Oh, I'm sorry. I said that he  
18:47:32 6 never gave any indication that he understood. Whether  
18:47:34 7 he understood or not, I don't know.

18:47:35 8 BY MR. HENNESSEY:

18:47:35 9 Q There was nothing about what you observed that  
18:47:37 10 led you to believe that he understood anything that you  
18:47:39 11 told him, correct?

18:47:40 12 A Correct.

18:47:41 13 Q Did you tell -- did you place Mr. Tran against  
18:47:51 14 Officer El-Farra's leg because you thought it may help  
18:47:55 15 him breathe?

18:47:55 16 A Yes.

18:47:56 17 Q What about his breathing concerned you to the  
18:47:58 18 point of trying -- of him needing help? What was it  
18:48:02 19 about the way that he was breathing that made you think  
18:48:05 20 he needed help?

18:48:07 21 A Well, again, he had very rapid breathing. You  
18:48:11 22 know, it was very heavy, very rapid, and we thought that  
18:48:15 23 if we had put him up in a seated position that would  
18:48:19 24 help him to relax and help him to calm down because he  
18:48:22 25 would be a little more comfortable than laying on his

18:49:11 1 assumes facts not in evidence; it's compound.

18:49:12 2 Go ahead.

18:49:13 3 THE WITNESS: Correct.

18:49:14 4 BY MR. HENNESSEY:

18:49:14 5 Q Okay. And you advised Internal Affairs on

18:49:18 6 September 23rd, 2008, that you had been advised of

18:49:21 7 Mr. Tran's prior history of mental health problems

18:49:21 8 before you arrived on scene, correct?

18:49:26 9 A I don't recall --

18:49:26 10 MR. SHERMAN: Same objections.

18:49:26 11 THE WITNESS: -- stating that.

18:49:26 12 BY MR. HENNESSEY:

18:49:30 13 Q Okay. You don't recall stating that?

18:49:31 14 A I don't.

18:49:35 15 MR. SHERMAN: I think he's going to show you

18:49:37 16 the statement. Go to page 19.

18:49:37 17 BY MR. HENNESSEY:

18:49:42 18 Q Nineteen.

18:49:42 19 A Okay.

18:49:44 20 Q When you were asked, Did you have any

18:49:47 21 indication there might have been any other serious

18:49:48 22 problems with him, Tran, at this point --

18:49:51 23 MR. SHERMAN: Where are you at, Counsel?

18:49:53 24 MR. HENNESSEY: Yeah, I'm on -- they're not

18:49:53 25 numbered, but I'm about four lines --

18:50:51 1 MR. SHERMAN: -- so whether or not he has all  
18:50:51 2 the pages would possibly -- assumes facts not in  
18:50:51 3 evidence.

18:50:52 4 MR. HENNESSEY: Yeah, that's true.

18:50:53 5 MR. SHERMAN: Calls for speculation.

18:50:56 6 MR. HENNESSEY: Okay.

18:50:57 7 MR. SHERMAN: Okay. What he was reading for  
18:50:58 8 you, even though it's on his page 19, is apparently on  
18:51:00 9 this page 18?

18:51:01 10 THE WITNESS: Yes.

18:51:03 11 MR. SHERMAN: Okay. Now, where were we, where  
18:51:03 12 did it start, "um"?

18:51:05 13 THE WITNESS: Yes. Right here (indicating).

18:51:05 14 MR. SHERMAN: Okay. Go ahead. I'm with you.  
18:51:08 15 You know where he's picking up from?

18:51:10 16 THE WITNESS: Yes.

18:51:11 17 MR. SHERMAN: Go ahead.

18:51:11 18 THE WITNESS: I'm sorry, could you restate --  
18:51:11 19 BY MR. HENNESSEY:

18:51:13 20 Q Do you recall having received some information  
18:51:14 21 of a prior mental health history for Mr. Tran before  
18:51:18 22 arrival?

18:51:18 23 A Just that he was described as "crazy" and that  
18:51:22 24 it was -- I inferred that off of the fact that it was a  
18:51:25 25 5150 type call.

18:53:32 1 to be a painful situation. No. I mean, I'm basing this  
18:53:36 2 off of personal experiences.

18:53:37 3 BY MR. HENNESSEY:

18:53:37 4 Q Your only personal experience and everything  
18:53:40 5 you've been trained leads you to have the opinion that a  
18:53:44 6 taser device is not painful?

18:53:46 7 MR. SHERMAN: Objection. Vague and ambiguous.

18:53:47 8 BY MR. HENNESSEY:

18:53:47 9 Q Is that true?

18:53:48 10 A Yes.

18:53:48 11 Q You don't believe the taser device to be a  
18:53:51 12 painful tool?

18:53:52 13 MR. SHERMAN: Objection. Argumentative; asked  
18:53:54 14 and answered; irrelevant.

18:53:55 15 Go ahead.

18:53:55 16 THE WITNESS: No, I do not.

18:53:57 17 BY MR. HENNESSEY:

18:54:00 18 Q Okay. And you didn't think, based upon  
18:54:05 19 anything that you saw from Mr. Tran immediately after  
18:54:08 20 the tasering event, that he was in any immediate need  
18:54:11 21 for medical attention, correct?

18:54:13 22 A Correct.

18:54:13 23 MR. SHERMAN: Objection. Vague.

18:54:14 24 Go ahead.

18:54:15 25 ///

18:58:22 1 A I did not write one.

18:58:24 2 Q Is that -- does that violate policies of the

18:58:28 3 Garden Grove Police Department about writing a police

18:58:30 4 report to document a tasering event?

18:58:32 5 MR. SHERMAN: Objection. Argumentative;

18:58:34 6 irrelevant; immaterial.

18:58:36 7 Go ahead.

18:58:36 8 THE WITNESS: No, it does not.

18:58:37 9 BY MR. HENNESSEY:

18:58:38 10 Q Why not?

18:58:39 11 MR. SHERMAN: Objection. Argumentative.

18:58:41 12 Go ahead.

18:58:41 13 THE WITNESS: Because this is an instance in

18:58:43 14 which the Orange County D.A. investigative team was

18:58:45 15 responding to the scene and, per our policy, we do not

18:58:50 16 write reports in that instance, in that our statement to

18:58:53 17 the District Attorney's Office, if provided, would

18:58:55 18 suffice.

18:58:56 19 BY MR. HENNESSEY:

18:58:57 20 Q Okay. But in this case you didn't provide a

18:58:59 21 statement to the Orange County District Attorney's

18:59:01 22 Office, correct?

18:59:02 23 MR. SHERMAN: Objection. Relevancy;

18:59:02 24 materiality.

18:59:05 25 Go ahead.

18:59:05 1 THE WITNESS: No, I refused to.  
18:59:05 2 BY MR. HENNESSEY:  
18:59:07 3 Q Okay. And why did you refuse to provide a  
18:59:10 4 statement to the Orange County District Attorney's  
18:59:10 5 Office?

18:59:10 6 MR. SHERMAN: Objection. Irrelevant;  
18:59:12 7 immaterial; possible Fifth Amendment violations;  
18:59:13 8 possible attorney-client communications.

18:59:16 9 Go ahead.

18:59:17 10 THE WITNESS: I was advised so by my attorney,  
18:59:20 11 Saku Ethir.

18:59:20 12 BY MR. HENNESSEY:

18:59:21 13 Q Okay. If the policy is that you don't have to  
18:59:23 14 write a police report in situations where the Orange  
18:59:27 15 County District Attorney's Office is conducting their  
18:59:29 16 own investigation, and you refuse to cooperate with  
18:59:32 17 their investigation, wouldn't that make you required to  
18:59:35 18 write your own report about the incident?

18:59:37 19 MR. SHERMAN: Objection. Argumentative;  
18:59:39 20 foundation; assumes facts not in evidence; incomplete  
18:59:44 21 hypothetical.

18:59:44 22 Go ahead.

18:59:45 23 THE WITNESS: I was advised by Garden Grove  
18:59:49 24 sergeants, as well as the investigators assisting the  
18:59:52 25 Orange County District Attorney's Investigations Team

19:01:12 1 argumentative; foundation.

19:01:15 2 Go ahead.

19:01:15 3 THE WITNESS: No.

19:01:16 4 BY MR. HENNESSEY:

19:01:16 5 Q Did Sergeant Wagner tell you not to write a  
19:01:19 6 police report?

19:01:19 7 A I don't recall if he did or not.

19:01:21 8 Q Do you recall speaking to any other sergeants,  
19:01:23 9 other than Sergeant Bailey and Sergeant Wagner, about  
19:01:25 10 the incidents of September 3rd, 2008?

19:01:36 11 A I do recall briefly running into the Crimes  
19:01:45 12 Against Persons sergeant --

19:01:45 13 THE REPORTER: The who?

19:01:46 14 THE WITNESS: Crimes Against Persons. I can't  
19:01:47 15 recall who the sergeant of that unit was at that time.

19:01:48 16 BY MR. HENNESSEY:

19:01:48 17 Q What is the Crimes Against Persons Unit?

19:01:51 18 A It is the investigations unit that investigates  
19:02:00 19 all violent -- or all crimes committed against a person,  
19:02:03 20 not involving solely property and property loss and  
19:02:08 21 damage.

19:02:08 22 Q You're talking about assaults with a deadly  
19:02:09 23 weapon, homicides, things like that?

19:02:11 24 A Yes.

19:02:11 25 Q Do you believe that somebody from the -- a

19:03:44 1 MR. SHERMAN: So when was he told he shouldn't  
19:03:46 2 write a report?

19:03:47 3 MR. HENNESSEY: Yes.

19:03:47 4 THE WITNESS: I believe it was later that day  
19:03:49 5 after I had stated that I was not going to be providing  
19:03:53 6 a statement to the District Attorney's Investigation  
19:03:56 7 Team.

19:03:56 8 BY MR. HENNESSEY:

19:03:56 9 Q Okay. So this incident happens on  
19:04:00 10 September 3rd, the district attorneys come and ask you  
19:04:04 11 to provide a statement, you refuse. And then after that  
19:04:07 12 refusal, you speak to, potentially, Sergeant Peaslee,  
19:04:10 13 who tells you not to write a police report about the  
19:04:15 14 death of Andy Tran; is that the sequence of events?

19:04:17 15 MR. SHERMAN: Objection. Misstates testimony.

19:04:19 16 Go ahead.

19:04:19 17 THE WITNESS: Yes, I believe so.

19:04:21 18 BY MR. HENNESSEY:

19:04:21 19 Q Okay. Did you ask why you shouldn't write a  
19:04:24 20 police report about it? Was there any -- was there any  
19:04:27 21 back-and-forth communication with, potentially,  
19:04:29 22 Sergeant Peaslee or this other -- or somebody else as to  
19:04:33 23 why or why not -- why a report should be written or why  
19:04:38 24 a report shouldn't be written?

19:04:38 25 MR. SHERMAN: Relevancy; materiality; asked and

19:13:49 1 MR. HENNESSEY: I know I haven't.

19:13:49 2 MR. SHERMAN: No, that's why I said "go ahead."

19:13:50 3 It doesn't matter, even if you had, I was going to let

19:13:53 4 him answer it anyway.

19:13:53 5 MR. HENNESSEY: I'm looking at this and I'm

19:13:56 6 thinking, How haven't I asked that?

19:13:57 7 THE WITNESS: Yes, I have.

19:13:58 8 BY MR. HENNESSEY:

19:13:58 9 Q Okay. And specifically in relation to -- what

19:14:01 10 had you been trained, prior to September 3rd, as to --

19:14:03 11 are symptoms of somebody -- well, was there anything

19:14:05 12 about the way Andy Tran was acting that led you to

19:14:10 13 believe that he was under the influence of anything?

19:14:12 14 A Yes.

19:14:14 15 Q What did you believe he may be under the

19:14:16 16 influence of?

19:14:17 17 A I believed that it could have been some type of

19:14:22 18 controlled substance, particularly a stimulant. And I

19:14:25 19 based that based off of, you know, his shaking, the foam

19:14:33 20 that was forming at the corner of his mouth. And

19:14:34 21 particularly the dilatation of his pupils, given the

19:14:41 22 lighting conditions.

19:14:41 23 Q So it was the shaking, the foaming at the

19:14:44 24 mouth, the dilation of the pupils that led you to

19:14:47 25 believe that he may be under the influence of a central

19:14:47 1 nervous system stimulant?

19:14:50 2 A Yes.

19:14:51 3 Q And when you say central nervous system

19:14:53 4 stimulant, are you talking about substances such as

19:14:54 5 methamphetamine?

19:14:55 6 A Yes.

19:14:55 7 Q Cocaine?

19:14:56 8 A Yes.

19:14:57 9 Q And all derivatives of cocaine?

19:15:00 10 A Yes.

19:15:00 11 Q Okay.

19:15:00 12 MR. SHERMAN: Like crack?

19:15:01 13 MR. HENNESSEY: Crack, exactly. Smoking,

19:15:04 14 whatever.

19:15:04 15 BY MR. HENNESSEY:

19:15:04 16 Q As opposed to central nervous system

19:15:08 17 depressants such as heroin or opiates; is that what you

19:15:12 18 saw?

19:15:12 19 A Yes.

19:15:12 20 Q And is it your training that people who appear

19:15:16 21 to be under the influence of a central nervous system

19:15:19 22 stimulant are at a higher risk of sudden death from

19:15:23 23 excited delirium, is that one of the factors that you've

19:15:26 24 been trained to look for?

19:15:27 25 A Yes.

19:15:27 1 Q Okay. And you did see symptoms from Mr. Tran  
19:15:30 2 that was consistent with central nervous system  
19:15:34 3 stimulant usage and you still determined that deploying  
19:15:38 4 a taser against him was appropriate?  
19:15:40 5 MR. SHERMAN: Objection. Argumentative;  
19:15:42 6 irrelevant.  
19:15:42 7 Go ahead.  
19:15:43 8 THE WITNESS: Yes.  
19:15:43 9 BY MR. HENNESSEY:  
19:15:44 10 Q Even though you understood that with subjects  
19:15:47 11 such as him, based upon your training, there was a  
19:15:51 12 chance of sudden death from the use of the taser,  
19:15:53 13 correct?  
19:15:53 14 MR. SHERMAN: Objection. Compound; it assumes  
19:15:55 15 facts not in evidence; lacks foundation; incomplete  
19:15:57 16 hypothetical.  
19:15:58 17 Go ahead.  
19:15:58 18 THE WITNESS: Yes.  
19:15:59 19 MR. HENNESSEY: Okay. I don't have anything  
19:16:01 20 further.  
19:16:01 21 MR. SHERMAN: Nothing further. Stipulation?  
19:16:03 22 MR. HENNESSEY: Can you make the stipulation?  
19:16:05 23 MR. SHERMAN: Sure.  
19:16:07 24 THE REPORTER: Slowly.  
19:16:11 25 MR. SHERMAN: I propose that we relieve the

1 CERTIFICATION

2 OF

3 CERTIFIED SHORTHAND REPORTER

4

5 I, STEPHANIE WILLIAMS, a Certified Shorthand  
6 Reporter of the State of California, do hereby certify:

7 That the foregoing proceedings were taken before me  
8 at the time and place herein set forth; that the witness  
9 in the foregoing proceedings, prior to testifying, was  
10 placed under oath; that a verbatim record of the  
11 proceedings was made by me using machine shorthand which  
12 was thereafter transcribed under my direction; further,  
13 that the foregoing is an accurate transcription thereof.

14 I further declare that I am neither financially  
15 interested in the action nor a relative or employee of  
16 any attorney of any of the parties.

17 In witness whereof, I have this date ~~subscribed~~ signed my  
18 name Stephanie Williams. 

19  
20 Dated: March 28, 2011

21 Certificate Number 13482

22

23

24

25

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

QUYEN KIM DANG, et al., ) CASE NO. SACV10-03388DOC  
Plaintiffs, ) (MLGx)  
vs. )  
CITY OF GARDEN GROVE, et )  
al., )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF  
RICHARD I. FUKUMOTO, M.D.  
Anaheim, California  
Wednesday, May 25, 2011

REPORTED BY: Jennifer K. Abe, CSR No. 10753  
Registered Professional Reporter

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3

4 QUYEN KIM DANG, et al., ) CASE NO. SACV10-03388DOC  
5 ) (MLGx)  
6 Plaintiffs, )  
7 vs. )  
8 CITY OF GARDEN GROVE, et )  
9 al., )  
Defendants. )  
\_\_\_\_\_ )

10

11

12 Videotaped Deposition of RICHARD I. FUKUMOTO,  
13 M.D., taken before Jennifer K. Abe, a Certified Shorthand  
14 Reporter for the State of California, beginning at  
15 10:25 a.m. and ending at 1:37 p.m., on Wednesday, May 25,  
16 2011, at Richards, Fischer, Fukumoto Medical Group, Inc.,  
17 1240 South State College Boulevard, Suite 135, Anaheim,  
18 California.

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24

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1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFF:

3 LAW OFFICES OF SEAN HENNESSEY  
4 BY: SEAN HENNESSEY, ESQ.  
5 8231 Westminster Boulevard  
Westminster, California 92683  
TEL: (949) 280-1257 FAX: (714) 898-7449

6 - and -

7 LAW OFFICES OF LIEM H. DO & ASSOCIATES  
8 BY: PAUL MINHTHU PHAM, ESQ.  
9 8231 Westminster Boulevard  
Westminster, California 92683  
TEL: (714) 898-7579

10 FOR DEFENDANT CITY OF GARDEN GROVE, ET AL.:

11 LAW OFFICES OF FERGUSON, PRAET & SHERMAN  
12 BY: STEVEN SHERMAN, ESQ.  
13 1631 East 18th Street  
Santa Ana, California 92705  
TEL: (714) 953-5300

14  
15 ALSO PRESENT:

16 TIM NOLAN, LEGAL VIDEOGRAPHER

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1 | been busy.

2 MR. HENNESSEY: Very unfortunately.

3 BY MR. HENNESSEY:

4 Q Okay. And since 1965, it appears that most,  
5 if not all, of your professional experiences appeared  
6 to be in the field of pathology?

7 Would that be accurate?

8 A Yes, exclusively in pathology.

9 Q Have you ever practiced in any other

10:40:06 10 capacity, other than a pathologist, such as a family  
11 physician, a -- any other field, you know, oncology  
12 or, you know, any other field of medicine other than  
13 pathology?

14 A No. Since I became board certified, no,

10:40:27 15 I've been exclusively doing anatomical, clinical, and  
16 forensic pathology.

17 Q How would you describe anatomical pathology?

18           A     Anatomical pathology is that sub-specialty  
19        in pathology where the pathologist examines tissues,  
20        biopsies, and specimen taken from hospitals.

He's also in charge of running the hospital pathology laboratory, and basically that's what the analytical pathologist does.

Q Okay. So in order to be an anatomical pathologist, I'm assuming that you have to have

1 Q -- just things that would commonly -- more  
2 common things that -- well, can you think of any  
3 other type of accidental deaths?

4 MR. SHERMAN: Objection; vague and  
10:51:58 5 ambiguous; overbroad.

6 BY MR. HENNESSEY:

7 Q Anything that you've described as an  
8 accidental death.

9 How many autopsies have you performed, do  
10:52:04 10 you think, over the course of your career?

11 A You really don't want to know.

12 Q I know I probably would be shocked and awed  
13 by it, but --

14 A At least 15,000.

10:52:14 15 Q 15,000. Okay.

16 And that, I'm assuming, began in  
17 approximately 1965?

18 A Well, I was doing it even before that in the  
19 service and also during my training, I was doing  
10:52:28 20 autopsies.

21 Q Okay. When you say "15,000," are you  
22 talking 15,000 where you were the primary pathologist  
23 as opposed to, you know, being the secondary doctor  
24 there watching or observing?

10:52:43 25 Are you talking about being the primary at

1           somebody fired a gun into the ground and it  
2           ricocheted and went into the garage across the street  
3           and killed the person.

4           A      That is correct.

10:56:40 5           Q      Is that what you're talking about; that  
6           there is not just merely the medical evaluation, but  
7           there is also a secondary report, reviewing, and  
8           discussions with investigating law enforcement  
9           agencies or witnesses? Is that --

10:56:53 10          A      That is how I was trained. But in this  
11         County, you know, with the manner of death, usually  
12         it's not just the pathologist's job. It is the  
13         job -- and the coroner is actually the one who  
14         designates the manner of death, not the pathologist.

10:57:13 15          Q      And where would you fall, as the coroner or  
16         the pathologist, in the incident of Andy -- the  
17         September 4th, 2008, autopsy that you performed on  
18         Andy Tran, were you acting in the capacity as a  
19         coroner, pathologist, a combination of the two?

10:57:31 20          A      Pathologist.

21          Q      Pathologist. Okay.

22          And who would have been the coroner on  
23         Mr. Tran's autopsy?

24          A      The coroner is Sheriff Hutchens.

10:57:48 25          Q      When you say "Sheriff Hutchens," would it be

1 Q Okay.

2 A I can't remember.

3 Q Have you dealt with many cases involving  
4 in-custody deaths of individuals following a  
5 deployment of a Taser device?

6 A My recollection, I've had at least three.

7 Q Okay. And what time frame would you say  
8 these three investigations that you've done in  
9 relation to deaths following in close proximity to  
10 the application of a Taser to a human?

11 A At least two.

12 Q Okay. When you originally said "at least  
13 three," now saying "two," as you sit here, are you  
14 remembering the circumstances of the particular  
15 cases?

16 Is your memory being refreshed as you kind  
17 of sit here and think of --

18 A Well, one in particular.

19 Q Okay. And which -- what one in -- what case  
20 in particular can you remember involving a death  
21 closely following a deployment of a Taser?

22 MR. SHERMAN: Relevancy; immateriality.

23 THE WITNESS: It's a San Bernardino case  
24 that I was kind of asked to do by the sheriff as a  
25 courtesy to San Bernardino since their pathologist

1           was not available. I will always remember the case.

2           BY MR. HENNESSEY:

3           Q       Why will you always remember the case?

4           A       Because I got deposed by an attorney who  
5                    actually works with Taser.

11:32:07 6           Q       Would it be fair that it wasn't a pleasant  
7                    experience being questioned by the attorney from  
8                    Taser International?

9                   MR. SHERMAN: Objection; vague.

11:32:22 10           THE WITNESS: I wouldn't say it's  
11                    unpleasant. It just surprised me that the attorney  
12                    was from Taser, not from San Bernardino Sheriff's  
13                    Department.

14            MR. SHERMAN: We probably should have a  
15                    Taser attorney here.

16            MR. HENNESSEY: No need.

17            BY MR. HENNESSEY:

18            Q       Is there -- do you remember the name of that  
19                    attorney?

11:32:40 20           A       No, no. I don't remember.

21            Q       If I were to tell you a name, do you think  
22                    that it may refresh your recollection?

23            A       I don't think so.

24            Q       Let me just try.

11:32:57 25           A       Because of some of the things he said, that

1 is why I remembered him.

2 Q Did you have disagreements with that  
3 attorney about his opinions -- your opinions on that  
4 particular case?

11:33:14 5 MR. SHERMAN: Objection; vague.

6 THE WITNESS: I don't know, but his very  
7 last question really upset me.

8 BY MR. HENNESSEY:

9 Q And what was the -- what question was asked  
11:33:27 10 that upset you?

11 A He says, "Are you planning to represent  
12 other clients against Taser?"

13 I said, "No. I only get involved if I did  
14 the autopsy."

11:33:44 15 Q Why did that question upset you?

16 A Why?

17 Q I mean, given the number of times that  
18 you've been questioned in court and proceedings, why  
19 did that particular question upset you?

11:33:57 20 MR. SHERMAN: Vague; irrelevant.

21 THE WITNESS: It's the implication that I'm  
22 paid to give opinion favorable to the person that --

23 BY MR. HENNESSEY:

24 Q Did you give an opinion in that particular  
11:34:11 25 case that was favorable or nonfavorable to Taser?

1 A Very unfavorable.

2 Q Okay. Can you describe when that case  
3 occurred?

4 MR. SHERMAN: Relevancy; immateriality.

11:34:28 5 BY MR. HENNESSEY:

6 Q The year of that case?

7 A All I know is Mike Carona was still sheriff.  
8 That's all I can say. It's before Sheriff Hutchens.

9 Q Was it a case that went to a jury trial?

11:34:44 10 A I have no idea what happened.

11 Q Okay. You were just deposed in an informal  
12 environment such as this?

13 A Yes.

14 Q And do you remember approximately the year  
15 that that occurred?

16 A Well, when did -- it's during -- I believe  
17 it was during Mike Carona's first year, so --

18 Q So do you have any idea what year that may  
19 be?

11:35:10 20 A No, Hutchens.

21 Q Do you know the name of the San Bernardino  
22 coroner who's been working out there for about  
23 25 years? What his name is?

24 A Yes.

11:35:21 25 Q An Irish guy.

1           A     The attributable cause of death, he died as  
2           a result while Tasered.

3           Q     While Tasered?

4           A     Yes.

11:36:49 5           Q     That the Taser -- that the Taser device  
6           played some role in that person's death, at least  
7           according to your opinion?

8           A     He went into cardiac arrest.

9           Q     How soon -- I'm sorry.

11:37:01 10          A     He died. He went into cardiac respiratory  
11           arrest while being Tasered.

12          Q     Do you know how long after in that  
13           particular case -- do you remember the name of that  
14           case?

11:37:13 15          A     One thing I don't like to do is to remember  
16           names.

17          Q     Okay. Probably in your profession, that's a  
18           good one.

19           You just remember it was -- what  
11:37:25 20           jurisdiction was it out of? Meaning --

21          A     San Bernardino.

22          Q     San Bernardino.

23           And you believe it was during the first --  
24           do you remember the name of the attorney for the  
11:37:34 25           plaintiff in that case, maybe not the attorney for

1 Q Okay.

2 A All I've done is look at some -- whenever  
3 they have a video, you know, to show to the -- in the  
4 sheriff's department, I may have attended them.

11:40:22 5 That's about it.

6 Q Have you given any lectures to members of  
7 the Orange County District Attorney's Office, any law  
8 enforcement agency on the effects of Tasers on the  
9 human body?

11:40:36 10 A No.

11 Q Have you ever been asked to?

12 A No.

13 Q I'm assuming if you put in your findings in  
14 that particular case that at least one of the  
15 contributory causes of that person's death was the  
16 use of a Taser against him, you must have had some  
17 information about Tasers; is that true?

18 A Well, the report for the autopsy said that  
19 he was Tasered.

11:41:06 20 Q Okay.

21 A And he had cardiac arrest immediately after  
22 the Taser.

23 Q Did you consider the proximity between  
24 cardiac arrest and Taser, meaning the time frame  
11:41:30 25 between cardiac arrest and Taser, to have some

1 influence on your opinion as to the Taser having  
2 some -- having contributed in some manner to that  
3 person's death?

4 A Well, yes, because he never gained  
11:41:46 5 consciousness after the Tasering.

6 Q Okay. Do you know where you received the  
7 facts on this particular case? Who provided you the  
8 facts in this particular case of what happened?

9 A It would be from Mr. Gomez.

11:42:11 10 Q Okay. And do you know -- as you sit here  
11 today, do you know or do you remember what Mr. Gomez  
12 told you happened prior to the time Mr. Tran -- when  
13 I say "Mr. Tran," do you know who I'm talking about?

14 A Yes.

11:42:28 15 Q Okay. How did Mr. Gomez describe to you  
16 what happened prior to the deployment of a Taser, if  
17 you recall?

18 MR. SHERMAN: Objection; vague; overbroad in  
19 scope and time; speculation, also.

11:42:43 20 THE WITNESS: I really have a very vague  
21 memory. Without reading a report, I probably will  
22 not be able.

23 BY MR. HENNESSEY:

24 Q If I was able to provide you a report  
11:42:52 25 prepared by Mr. Ernie Gomez that summarized his

1 A It means that he's in cardiorespiratory  
2 arrest.

3 Q Is there any indication from the -- from the  
4 paramedic records that you've seen there that  
12:42:26 5 indicate that Mr. Tran was demonstrating labored  
6 breathing?

7 A No.

8 Q Is there anything in the paramedic report  
9 that indicates that Mr. Tran was not breathing at all  
12:42:45 10 when the paramedics initially arrived?

11 A Yes. It means that he was not breathing at  
12 all.

13 Q And according to -- if I can just look at  
14 it, according to the call incident history, it  
12:42:59 15 appears that the paramedics were dispatched at 1139  
16 and 38 seconds and arrived at 1143 and 12 seconds.

17 And is it your understanding that when they  
18 arrived at the 1143 and 12 seconds, it was at or near  
19 that time that they came across a lifeless Mr. Tran?

12:43:27 20 MR. SHERMAN: Objection; speculation;  
21 foundation; assumes facts not in evidence.

22 THE WITNESS: Yes. They arrived and the  
23 individual, it says, was full cardiopulmonary arrest.

24 BY MR. HENNESSEY:

12:43:39 25 Q What, if anything, does that potentially

1 death of the subject.  
2 From reading the reports from the  
3 paramedics, do you feel, based upon the time of the  
4 Tasering event until the time of death, that the  
12:45:44 5 Taser had something to do with the death of Andy  
6 Tran?

7 MR. SHERMAN: Objection; vague and  
8 ambiguous; assumes facts not in evidence; calls for  
9 speculation; lacks foundation. It's compound.

12:46:04 10 THE WITNESS: I would -- I would say that  
11 the Tasering did not help the situation.

12 BY MR. HENNESSEY:

13 Q Would you say that it likely contributed to  
14 his death?

12:46:18 15 MR. SHERMAN: Same objections.

16 THE WITNESS: I would say it probably  
17 contributed to the cardiac arrest.

18 BY MR. HENNESSEY:

19 Q Would you say that it's more likely than not  
12:46:28 20 that the Tasering event contributed to his death?

21 MR. SHERMAN: Objection; assumes facts not  
22 in evidence; lacks foundation; calls for speculation;  
23 vague and ambiguous.

24 THE WITNESS: Since the patient did not --  
12:46:52 25 did not overcome the cardiac arrest according to the

1 reports that I have read so far, I would say, yes.

2 BY MR. HENNESSEY:

3 Q That it's more likely than not that the  
4 Tasering event caused the death of Mr. Tran --

12:47:17 5 MR. SHERMAN: Objection; assumes facts not  
6 in evidence.

7 BY MR. HENNESSEY:

8 Q -- at least, in part?

9 A Yes. I would say it may have contributed to  
12:47:29 10 his cause of death.

11 Q Would you say that it is more likely than  
12 not that the Tasering event contributed to Mr. Tran's  
13 death at the time that he ultimately did pass away?

14 MR. SHERMAN: Same objections; vague and  
12:47:46 15 ambiguous; assumes facts not in evidence; lacks  
16 foundation; asked and answered.

17 THE WITNESS: I still would like to see the  
18 medical records.

19 MR. HENNESSEY: Okay. You know, given that  
12:47:57 20 statement, I think this is probably a good point to  
21 stop.

22 THE WITNESS: Uh-huh.

23 MR. HENNESSEY: And we'll get you those  
24 medical records.

12:48:03 25 MR. SHERMAN: Let me ask you one real quick

1 an enlarged heart?

2 A Quite a bit.

3 Q Which made him more susceptible to potential  
4 cardiac events --

12:49:58 5 A That is correct.

6 Q -- than a normal person?

7 A That is correct.

8 Q Would you also agree that people with  
9 enlarged hearts can die suddenly or they can also  
12:50:09 10 live long and -- long lives?

11 A That is correct.

12 Q It's impossible to determine whether one  
13 person who has the heart the size of Mr. Tran would  
14 be a candidate for immediate death or whether he  
12:50:23 15 could live into his 80s or 90s? Fair?

16 A That is correct.

17 Q Okay. And you are -- the cause of death in  
18 this particular situation, when you use the term  
19 "struggle," were you using the term "struggle" to  
20 define the deployment of a Taser or was it your  
21 understanding that there was more physical contact  
22 between Mr. Tran and members of law enforcement or  
23 was it simply the deployment of the Taser?

24 A I would say it's everything. In other  
25 words, it was a confrontation, the Tasering, and

1 whatever happened.

2 Q Okay.

3 A This is why it's important that I look at  
4 the whole chart.

12:51:09 5 Q And fair enough.

6 But I just -- I just want to know, just  
7 procedurally, do you believe that Mr. Tran died as a  
8 result of a Diphenhydramine overdose?

9 A No.

12:51:27 10 Q Do you believe that the cause of his death  
11 was caused by a Trihexyphenidyl overdose?

12 A By themselves, the two medications of drugs  
13 that you mentioned did not cause his death by  
14 themselves.

12:51:46 15 Q Okay. Meaning if everything else was  
16 normal, the level of Diphenhydramine in his system  
17 would not have caused an overdose in and of itself?

18 A That is correct. He would not have died  
19 from the combination effects of those drugs.

12:52:03 20 Q Okay.

21 MR. SHERMAN: Sorry. Go ahead.

22 BY MR. HENNESSEY:

23 Q So you do not -- your opinion is not that  
24 the hypertrophic cardiomyopathy was a result of the  
12:52:19 25 interaction of those two substances found in his

1 system?

2 A No. I think the two drugs that are  
3 mentioned in this report did not cause the enlarged  
4 heart.

12:52:31 5 Q Okay. And it was not merely the enlarged  
6 heart that caused his death at the time that he died  
7 on 9/03/08 alone; correct?

8 A I would say no. It is the circumstance, the  
9 events that occurred, causing his heart to become  
12:52:57 10 overloaded.

11 Q Meaning it wasn't a coincidence that here is  
12 a guy with an enlarged heart who then got involved in  
13 some type of alleged struggle with law enforcement  
14 that resulted in a deployment of Taser, and he just  
12:53:13 15 coincidentally died of an enlarged heart, and the  
16 police involvement had nothing to do with it? Fair?

17 MR. SHERMAN: Objection; compound; vague;  
18 assumes facts not in evidence; lacks foundation.

19 BY MR. HENNESSEY:

12:53:24 20 Q I mean, it just wasn't coincidental.

21 MR. SHERMAN: Objection -- same objections.

22 THE WITNESS: I don't think so.

23 BY MR. HENNESSEY:

24 Q Okay. And you don't think so because of the  
12:53:36 25 fact that you were told that there was some type of

1 reports are on this disk.

2 Because I believe on Wednesday you also  
3 indicated that normally during the autopsy process,  
4 you do have access to police reports. So I provided  
09:18:09 5 this disk, which I believe contain all of the police  
6 reports.

7 And just so to show you, Steve, this is the  
8 disk I think we've all been working off of.

9 MR. SHERMAN: It could be.

09:18:23 10 MR. HENNESSEY: I'll be more than happy to  
11 let you look at it on my computer if there is any  
12 issues in that regard.

13 MR. SHERMAN: Okay. I appreciate that.

14 Thank you.

09:18:30 15 BY MR. HENNESSEY:

16 Q In relation to these documents, Doctor, have  
17 you had an opportunity to review any or all of the  
18 documents that were provided?

19 A I have reviewed all of the documents you  
09:18:43 20 have provided.

21 Q And when you say "all of the documents,"  
22 would that include the dispatch printout?

23 A Yes.

24 Q Would that include the Ernesto Gomez's  
09:18:51 25 Investigative -- I guess it would be Investigative

1                   Summary?

2                   A     Yes.

3                   Q     Would that include the --

4                   A     That's the coroner's file.

09:19:01 5                   Q     -- the coroner's file?

6                   Is this the entire coroner's file to your  
7                   knowledge or does this appear to be the entire  
8                   coroner's file?

9                   A     It's -- I believe it's close to being  
09:19:14 10               complete.

11                  Q     Is there anything in the coroner's file from  
12                 this file that I'm holding up that you would expect  
13                 to see that wasn't in the file?

14                  Is there anything that like kind of sticks  
09:19:26 15               out?

16                  A     The only thing I did not see is the final --  
17                 a copy of the final Death Certificate.

18                  Q     Okay. Okay. And I think we can accommodate  
19                 that.

09:19:39 20               Did you have an opportunity to read the  
21                 interview of John David Herrera, captain/paramedic,  
22                 Garden Grove City Fire Department?

23                  A     Yes, I did.

24                  Q     Did you have an opportunity to review what  
09:19:57 25               appears to be the paramedics reports?

1       It's taken a lot of effort to try to figure out  
2       exactly what caused the person's death.

3           A     Yes.

4           Q     At the end of the first part of the  
09:52:23 5       deposition that we had on Wednesday, one of the  
6       things that you said near the end was that this is  
7       not a very complicated case.

8           What did you mean by that?

9           A     By that I mean, as from the -- based on  
09:52:41 10      pathological autopsy findings and the -- along with  
11      the chem- -- the toxicological and chemical analyses  
12      of the various specimen, to me, it is not a very  
13      complicated case compared to many other things I've  
14      done.

09:53:11 15      Q     Why wasn't it complicated compared to other  
16      cases that you've done?

17           MR. SHERMAN: Objection; vague;  
18           argumentative.

19           THE WITNESS: I would say --

09:53:22 20      MR. HENNESSEY: I'm certainly not trying to  
21      be argumentative.

22           THE WITNESS: Yes. It's not that  
23      complicated. Because in this case, I have more facts  
24      than some of the cases I've worked with.

09:53:33 25      BY MR. HENNESSEY:

1 BY MR. HENNESSEY:

2 Q Other than that occasion where you worked  
3 for San Bernardino in that case that apparently  
4 involved some type of Tasering activity and a  
11:16:58 5 subsequent death, do you recall any other cases that  
6 you worked on that involved a death following  
7 application of a Taser from a police officer, from a  
8 private citizen, from anyone, meaning like, you know,  
9 a husband Tasering their wife or somebody using it as  
11:17:16 10 a weapon on a street?

11 Do you know any -- can you think of any  
12 other cases, other than this and the one you talked  
13 about from San Bernardino?

14 MR. SHERMAN: Overbroad and compound.

11:17:26 15 THE WITNESS: No. I think death due to  
16 Tasering, I think I've done maybe -- I know of at  
17 least maybe about three or four cases. That's all  
18 I've done, and every one of them has involved police  
19 officers.

11:17:48 20 BY MR. HENNESSEY:

21 Q Okay. So you've personally been the chief  
22 pathologist on three or four different cases  
23 involving police Tasering an individual who at some  
24 later point died; is that fair?

11:18:05 25 A That is correct. The death -- I mean, did

1           not die as a result of the Tasering. One or two of  
2           them did not die as a result of the Tasering. That  
3           is something else.

4           Q        Okay. All right. A Taser may have been  
11:18:19 5           involved, but you did not determine that had anything  
6           to do with the resultant death?

7           A        No. Yes. They've been Tasered, but then  
8           survived and then died from something else, like a  
9           gunshot wound or --

11:18:31 10          Q        Okay. Okay. How many cases have you  
11           determined that a subject died following a police  
12           encounter as a result of a Taser?

13           MR. SHERMAN: Objection; asked and answered;  
14           vague and ambiguous.

11:18:48 15          THE WITNESS: I think cases I've done would  
16           be that I say -- I would say the Tasering may have  
17           something to do with the death, it would be two  
18           cases, the San Bernardino case and this one.

19           BY MR. HENNESSEY:

11:19:03 20          Q        And I know we talked about the San  
21           Bernardino case yesterday and this case.

22           Other than these two cases, are these the  
23           only two cases that you can recall where you  
24           attributed as at least a part of the death the  
11:19:34 25           deployment of a Taser by a law enforcement officer

1 Q -- by 10:00 o'clock?

2 A That is correct.

3 Q Do you have any reason to believe that any  
4 blood was drawn by anyone from the coroner's office  
11:38:07 5 prior to September 4th, 2008?

6 A No, not at the coroner's office, I mean,  
7 blood would not have been drawn.

8 Q It wouldn't be something that Ms. Williams  
9 would do at the hospital or anything like that when  
11:38:20 10 she goes down after she's notified of a death?

11 A When she goes to the hospital, she will try  
12 and collect whatever blood sample has been obtained.

13 Q Okay. Okay. Would it be fair to say  
14 that -- you're familiar with -- have you ever been  
11:38:36 15 qualified as an expert in toxicology in courtrooms?

16 A On just an analysis of the result, not  
17 the -- how the test is run.

18 Q Okay.

19 A Just interpretation of results.

11:38:51 20 Q I'm assuming you're familiar with how --  
21 absorption and burn-off of alcohol?

22 A Yes.

23 Q You're familiar with those terms --

24 A Yes.

11:39:04 25 Q -- when I say them?

1           Would it be fair to say that once a person  
2 dies, that any -- that the breakdown or the burn-off  
3 of alcohol stops?

4           MR. SHERMAN: Vague and ambiguous.

11:39:20 5           THE WITNESS: There is some what we call a  
6 degradation decomposition change; but, basically, if  
7 it's done within -- you know, I would say 24 hours,  
8 it probably will be pretty well -- it's okay, the  
9 results.

11:39:39 10          BY MR. HENNESSEY:

11           Q       Meaning that the blood drawn at  
12 approximately give or take 10:00 o'clock on 9/04/03  
13 (sic) would accurately show the -- whatever  
14 substances were tested for at the time of Mr. Tran's  
15 death?

16           MR. SHERMAN: Objection; vague and  
17 ambiguous; assumes facts not in evidence; lacks  
18 foundation; calls for speculation.

19           THE WITNESS: And this would indicate that  
20 the level that is present is below the minimum  
21 standard that the analytical laboratory has. It  
22 doesn't mean it's completely zero.

23           MR. HENNESSEY: Okay.

24           THE WITNESS: It may be slightly elevated.  
25 I mean, it may be a level; but it's below the

1       two prongs sticking out of his leg, but he's got at  
2       least the puncture sites anyway; and I've taken  
3       specimen for toxicology to rule out any chemicals  
4       that may or may not be present in him.

11:54:46 5           Q       And the ultimate -- did the toxicology  
6       results that you ultimately obtained, did they in any  
7       way, shape, or form affect your cause of Mr. Tran's  
8       death?

9           MR. SHERMAN: Vague.

11:55:02 10          THE WITNESS: Yes. I think it's  
11       important -- he has a level of Diphenhydramine, which  
12       is somewhat elevated; but, to me, it's not fatal. So  
13       he is under the influence of certain medication.

14          BY MR. HENNESSEY:

11:55:24 15          Q       And in this case, it would be like under the  
16       influence of the active ingredient of Benadryl?

17          A       Yes.

18          Q       Okay.

19          A       And that he's been taking his medication  
20       because he had the other medication, Valproic Acid,  
21       which is the metabolite of Depakote.

22          Q       Okay.

23          A       So I know he's taking -- he was given his  
24       medication sometime within the last 24 hours.

11:55:52 25          Q       The three medications that were listed on

1       Page 3 of Investigator Gomez's report, do you see  
2       presence in the toxicology results that Mr. Tran had  
3       appeared to have been taking his medications?

4           A     Yes. Because the Triphenyl- -- I have my  
11:56:18 5       own report here.

6           Q     Trihexyphenidyl?

7           A     Trihexyphenidyl is present.

8           Q     Okay.

9           A     So it means he's taking it and the Valproic  
11:56:27 10       Acid.

11          Q     And the Valproic Acid is --

12          A     Depakote.

13          Q     -- Depakote?

14          A     Yes.

11:56:33 15          Q     This is mine so I can write on this.

16          A     Yes. They did not mention anything about  
17       Risperidone, but that does not mean a thing because  
18       it may be at a level below their minimum standard.

19          Q     Okay. So the fact that it's not -- the  
11:56:56 20       Risperidone is not listed does not -- is not an  
21       indication, at least from the toxicology results,  
22       that he wasn't taking that medication?

23          A     That is correct.

24          Q     Can you tell -- they say that the results  
11:57:08 25       and interpretations were that Depakote and

1           they have the level of 7.9 milligrams per liter.

2           In the literature, the toxic range is  
3           around -- some report as low as 8 up to about 31  
4           milligrams per liter. The mean range usually, the  
5           toxic level, is about 16.

6           Since it is approaching, you know, very  
7           close to the minimum level so -- and since there is  
8           usually a redistribution of a drug in the blood after  
9           death, they redid it.

12:00:23 10           And in this case during the autopsy, we not  
11           only take postmortem blood from the heart, but we  
12           take some from the peripheral blood, in other words,  
13           away from the heart.

12:00:41 14           And the peripheral blood level was 6.2  
15           milligrams per liter. So probably the level is  
16           closer to 6.2 than 7.9.

12:00:56 17           Q       Is that high? Low? How would you describe  
18           that?

12:01:14 19           A       6.2 is -- it's therapeutic level, but below  
20           the known levels of fatal cases. And just to check  
21           on that to make sure this was fairly accurate, they  
22           did the liver sample, which was somewhat elevated.

23           And to me the reason it's elevated, because  
24           the liver is not really metabolizing the drug.  
25           Because I told you the liver is bad. It's

1 probably he's got liver failure.

2 That's the reason why it's a little higher  
3 than what you should normally find in a normal liver.

4 Normal liver would be approximately around 35, 36  
12:02:04 5 milligrams; but since it's a failing liver, it's  
6 somewhat retained. It does not metabolize it as  
7 fast.

8 Q Got you.

9 So would that level be considered high?

12:02:18 10 Low?

11 A Yes. The liver level is normally high --  
12 I'm sorry, abnormally high then. Normally, I would  
13 say it would probably go way up to 50, you know.  
14 We've done some fatal cases where they have  
12:02:38 15 50 milligrams.

16 And the stomach contents, to find out how  
17 much is found in the stomach residue, and 7.1  
18 milligrams is not too much. I think the normal  
19 dosage is about 25 milligrams.

20 12:03:00 Q Okay. So at least as far as the postmortem,  
21 the peripheral and the stomach content levels of the  
22 Diphenhydramine, they were all well within  
23 therapeutic levels?

24 A Right. He's under the influence.

25 12:03:13 MR. SHERMAN: Objection; misstates.

1                   THE WITNESS: He's still under the influence  
2                   of the Diphenhydramine. So if you got arrested for  
3                   DUI, no alcohol, but high level, he'd probably get a  
4                   warning saying, don't take it before you drive.

12:03:28 5                   MR. HENNESSEY: Okay. Okay. I've done a  
6                   lot of criminal law. I've never seen a driving under  
7                   the influence of a Benadryl case yet.

8                   THE WITNESS: It's usually probably they  
9                   have alcohol in them.

12:03:43 10                  MR. HENNESSEY: Yes. I'm assuming there  
11                  probably is. I'm assuming they're not just limiting  
12                  it to that.

13                  BY MR. HENNESSEY:

14                  Q         So none of these levels at least appear to  
15                  be toxic to you; is that true?

16                  MR. SHERMAN: Objection; misstates; vague.

17                  THE WITNESS: Let's put it this way, it's  
18                  toxic but not -- to me, not fatal.

19                  BY MR. HENNESSEY:

12:03:58 20                  Q         Okay. Meaning he did not die from a  
21                  Diphenhydramine overdose?

22                  A         No. In my opinion, no.

23                  Q         Nor did he die from a Trihexyphenidyl  
24                  overdose?

12:04:16 25                  A         In my opinion, no.

1 BY MR. HENNESSEY:

2 Q All right. Now, Officer Karschamroon gave  
3 some deposition testimony that, you know, he believed  
4 Mr. Tran, although was exhibiting signs of labored  
12:25:20 5 breathing, was still alive.

6 If you were to receive information from  
7 other sources that Mr. Tran did not appear to be  
8 breathing or moving in any fashion from the moment he  
9 went down from the Tasering, would that in any way,  
12:25:42 10 shape, or form change any opinions that you have in  
11 this case?

12 MR. SHERMAN: Objection; vague and  
13 ambiguous; assumes facts not in evidence; incomplete  
14 hypothetical.

12:25:51 15 THE WITNESS: Probably not. Because the  
16 reason I say that probably the cardiac arrhythmia  
17 occurred after he was Tasered, the fact that he said  
18 that labored breathing, that labored breathing could  
19 indicate that he was going into some kind of cardiac  
12:26:14 20 arrhythmia, which means he was still alive after he  
21 was Tasered but having cardiac arrhythmia.

22 BY MR. HENNESSEY:

23 Q If you believe the statement from Officer  
24 Karschamroon on that point.

12:26:28 25 A Yes.

1 Q Okay. So the Taser -- if you believe  
2 Officer Karschamroon and his observations, it appears  
3 that the Taser appeared to result in almost immediate  
4 cardiac arrhythmia?

12:26:56 5 MR. SHERMAN: Objection; misstates;  
6 incomplete hypothetical; vague and ambiguous;  
7 overbroad; assumes facts not in evidence; lacks  
8 foundation.

9 THE WITNESS: Yes, that cardiac arrhythmia  
12:27:06 10 occurred after the Tasering.

11 BY MR. HENNESSEY:

12 Q And based upon the description from Officer  
13 Karschamroon, the cardiac arrhythmia appeared to have  
14 occurred almost immediately following the Tasering  
12:27:20 15 based upon his observations of labored breathing?

16 MR. SHERMAN: Objection; vague; misstates  
17 testimony.

18 THE WITNESS: I don't know the time  
19 interval. I don't know if he gave in his deposition  
20 whether he gave a time interval from the actual  
21 incident to the actual first noticing the labored  
22 breathing.

23 MR. HENNESSEY: I'd hate to go through the  
24 deposition. I'm not too sure if he did. I don't  
12:28:22 25 want you to go through that because I have it

1 somewhere. Excuse me.

2 THE WITNESS: Uh-huh.

3 BY MR. HENNESSEY:

4 Q I don't know. We can waste all day if we're  
12:29:47 5 doing this.

6 But given the timing of the 11:38 call of a  
7 Tasering event until the 11:43 time arrival by the  
8 paramedics, what did Officer Karschamroon testify  
9 that leads you to believe that Mr. Tran was  
12:30:18 10 exhibiting potential symptoms of cardiac arrhythmia?

11 MR. SHERMAN: Objection; vague and  
12 ambiguous; overbroad in scope and time.

13 THE WITNESS: The fact that he started  
14 having difficulty breathing. Whether it's Officer --  
12:30:40 15 whatever his name is --

16 MR. HENNESSEY: Karschamroon.

17 THE WITNESS: -- Karschamroon's testimony or  
18 somebody else, I read that there was evidence that he  
19 appears to be having trouble breathing. Because a  
12:30:59 20 person who goes into cardiac arrhythmia will have  
21 some problems with breathing.

22 BY MR. HENNESSEY:

23 Q Was there anything -- was there anything  
24 that could have been done when the officers began  
12:31:17 25 noticing this labored breathing that could have

1                   THE WITNESS: I know he was handcuffed from  
2 behind.

3                   BY MR. HENNESSEY:

4                   Q       Do you recall Officer Karschamroon saying  
12:34:11 5       that he was on his chest with a knee on his back  
6       handcuffed and then -- then Officer Karschamroon  
7       noticed that he was having labored breathing and as a  
8       result, ultimately, he was placed against the legs of  
9       an officer who responded and put into some type of  
12:34:33 10      seated position?

11                  A       I remember that. Correct. Yes.

12                  Q       Okay. During that time frame, from the time  
13       that Officer Karschamroon noticed the labored  
14       breathing while Mr. Tran was in -- was on his chest,  
12:34:52 15      would that be the likely beginning point of the  
16       cardiac arrhythmia?

17                  MR. SHERMAN: Objection; calls for  
18       speculation; lacks foundation; assumes facts not in  
19       evidence; vague and ambiguous; incomplete  
12:35:02 20      hypothetical.

21                  THE WITNESS: The minute he was noted to  
22       having shortness of breath to me would be the  
23       likelihood of the start of his cardiac arrhythmia.

24                  BY MR. HENNESSEY:

12:35:13 25      Q       Okay. After the recognition of the

1 MR. SHERMAN: Same objections.

2 THE WITNESS: Um, if he's unable to really  
3 take a deep breath, yes, then it would affect it.

4 BY MR. HENNESSEY:

12:36:36 5 Q What effect would it have on him?

6 MR. SHERMAN: Same objections.

7 THE WITNESS: If you don't breathe properly,  
8 you're going to have less oxygen to your system.

9 BY MR. HENNESSEY:

12:36:46 10 Q How would the positions of the hands behind  
11 Mr. Tran's back -- Mr. Tran's back exacerbate or  
12 potentially exacerbate his breathing?

13 A He won't be able to take a complete -- a  
14 full expansion of his chest. It's a little more  
difficult.

12:37:11 15 Q Okay. And does that also -- does the size  
16 of -- is his make-up, his build, also a factor in  
17 that situation?

18 A I would say yes. His weight has probably a  
19 lot to do with it.

20 Q And do you recall Mr. Tran's size, weight,  
21 height, things like that?

22 A Well, yes, he was 67 inches, five-seven, and  
23 he weighed 203 pounds. He's bigger than you.

24 12:37:44 25 MR. SHERMAN: No. He's not bigger than me.

1 exacerbate his already noticed labored breathing?

2 MR. SHERMAN: Objection; vague and  
3 ambiguous; incomplete hypothetical; calls for  
4 speculation; lacks foundation; assumes facts not in  
12:39:38 5 evidence.

6 THE WITNESS: I would say it would -- has a  
7 negative influence.

8 BY MR. HENNESSEY:

9 Q The handcuffing would have a negative  
12:39:45 10 influence --

11 A To his back.

12 Q -- because of the nature of his build?

13 A That is correct.

14 Q And what would the negative impact of the  
12:39:54 15 handcuffing be based upon a person of his dimensions  
16 and the recognized labored breathing?

17 MR. SHERMAN: Asked and answered; vague and  
18 ambiguous.

19 THE WITNESS: Well, probably most likely,  
12:40:10 20 there would be a less expansion of his chest cavity.  
21 So the total volume probably would be a little  
22 diminished. Air to his lungs would be diminished.

23 BY MR. HENNESSEY:

24 Q And you noticed that as soon as the  
12:40:28 25 paramedics arrived, they removed the handcuffs?

1       would be more consistent with somebody having  
2       symptomatology of excited delirium?

3           A     Yes. They would be sweaty. So the  
4       clothing, if there is still clothing present, would  
12:54:12 5       be kind of wet.

6           Q     So --

7           A     Diaphoretic and then "wet" would be marked.

8           Q     Diaphoretic is --

9           A     Sweating.

12:54:21 10          Q     Sweating. Okay.

11               And then, you know, wet is I guess kind of  
12       like a higher level of sweating.

13               Again, the "moist" -- the box appears to be  
14       marked either normal or dry.

12:54:47 15          Again, would that be consistent or  
16       inconsistent with somebody exhibiting symptomatology  
17       of excited delirium?

18           A     It would be inconsistent.

12:55:10 19          Q     Okay. Under the pupils section, the left  
20       and the right are both marked as fixed and dilated.

21               What, if anything, does that signify to you?

22           A     It means probably that the brain activity is  
23       diminishing.

24           Q     Is diminishing?

12:55:26 25          A     Yes.

1 Q Is it also consistent with brain activity  
2 having already ceased?

3 MR. SHERMAN: Objection; speculation;  
4 foundation; assumes facts not in evidence; lacks  
12:55:36 5 foundation.

6 THE WITNESS: It didn't say reaction to it.  
7 Whether it reacted or not, I can't tell you. All it  
8 means it's already dilating.

9 BY MR. HENNESSEY:

10 12:55:45 Q What in the -- are we on any time? No?

11 12 What does fixed mean in relation to eye  
appearance?

13 A There is no reaction when they open them and  
14 extend it.

12:56:05 15 Q When they what?

16 A When they open the eyelid.

17 Q Is that something that medical professionals  
18 do? They open the eyelid?

19 A Yes. If it's fixed, there is no reaction to  
12:56:16 20 light.

21 Q Okay. So a fixed pupil would be a pupil  
22 showing no reaction to light?

23 A Yes.

24 Q Because when you open an eye up, if it's a  
12:56:30 25 sunny day, it's going to be exposed to light?

1 A That is correct.

2 Q And, again, I know this is going to be a  
3 dumb one, but I'm sure you're used to it from me so  
4 far.

12:56:46 5 Dilated, what does that term connote in  
6 relation to the pupils?

7 A It's bigger than normal. It's wider than  
8 normal is what it means. So when the paramedic  
9 opened the eyelid -- separated the eyelid, there is  
10 no constriction of the pupils, which means brain  
11 activity is going down.

12 Q Or has already stopped?

13 A Already stopped.

14 Q So from the evaluation of the pupils, would  
15 it be a reasonable assumption or would one reasonable  
16 interpretation of the observations the paramedics  
17 made of the left and right pupil, both being fixed  
18 and dilated, would one reasonable interpretation of  
19 that evidence be that brain function had already  
20 stopped entirely?

21 MR. SHERMAN: Objection; speculation;  
22 assumes facts not in evidence; lacks foundation.

23 BY MR. HENNESSEY:

24 Q Would that be one reasonable interpretation?

12:57:51 25 MR. SHERMAN: Incomplete hypothetical; vague

1 and ambiguous.

2 THE WITNESS: It cannot be ruled out.

3 BY MR. HENNESSEY:

4 Q Would it -- would it be considered a  
12:57:59 5 reasonable interpretation -- I'm not saying the only  
6 interpretation.

7 I'm just saying, would the fact that both  
8 the left and the right pupil are both checked as  
9 fixed and dilated, would one reasonable  
12:58:14 10 interpretation of those findings be that brain  
11 activity had already come to a complete stop?

12 MR. SHERMAN: Same objection except now it's  
13 argumentative and asked and answered.

14 MR. HENNESSEY: I'm certainly not trying to  
12:58:27 15 argue.

16 THE WITNESS: I would say yes. Yes.

17 BY MR. HENNESSEY:

18 Q Not the only potential explanation, but a  
19 reasonable explanation?

12:58:37 20 A Yes.

21 Q How long does it normally take for brain  
22 function to stop after a cardiac arrhythmia?

23 A I would say six to eight minutes.

24 Q Is there a range, an accepted --

12:59:01 25 A That's not cardiac arrhythmia, stopped,

1       an accident" is because there was no -- he did not  
2       die of -- he died of a natural process, but the way  
3       he died is because something accidental happened.

4                     In other words, there was a struggle,  
**02:12:55** 5       confrontation, along with the Tasering. There was no  
6       intentional intent to kill a person during that  
7       confrontation.

8                     Q      You don't know, as you sit here today, the  
9       legality of the deployment of that Taser; is that  
**02:13:17** 10      fair?

11                  MR. SHERMAN: Objection; speculation.

12                  THE WITNESS: That's correct. In other  
13       words, we have no -- legal things, we're not involved  
14       with.

**02:13:24** 15      BY MR. HENNESSEY:

16                  Q      Okay. All right. My question is --

17                  MR. SHERMAN: Well, you're not involved in  
18       legal things?

19                  THE WITNESS: That's right.

**02:13:30** 20      MR. SHERMAN: The Sheriff's Department and  
21       the DA are; correct?

22                  THE WITNESS: The DA is, but not the -- the  
23       coroner has nothing to do with legal things.

24                  BY MR. HENNESSEY:

**02:13:39** 25      Q      Okay. So when you say "accident," the --

1 cause -- you send a high amount of electricity  
2 through the body system causing contraction of the  
3 muscle.

4 Q And where did you learn this intended  
02:22:03 5 purpose of a Taser?

6 A Intended purpose of a Taser?

7 Q No, no. Where did -- what you just said,  
8 where did you -- where did you obtain that knowledge?

9 A Just from reading the articles.

02:22:14 10 Q Okay. Do you stay current -- I'm sorry.

11 You do read articles. Obviously, you've  
12 read articles on Tasers because you provided one.

13 Have you read articles on Tasers other than  
14 the one that you've provided?

02:22:29 15 MR. SHERMAN: Objection; asked and answered.

16 THE WITNESS: Yes. At one time, I had a  
17 whole notebook of it; but I said while I was --  
18 because of that San Bernardino case.

19 BY MR. HENNESSEY:

02:22:42 20 Q In relation to that San Bernardino case,  
21 what, if anything, did you do to familiarize yourself  
22 with the effects of a Taser on a human body?

23 MR. SHERMAN: Objection; relevancy;  
24 immateriality.

02:22:56 25 THE WITNESS: You mean experimentally?

1        You're not just asking --

2        BY MR. HENNESSEY:

3            Q      I'm not asking whether you personally

4        Tasered anybody or did anything like that.

02:23:02    5            I'm just asking, you know, you said you had  
6        a whole notebook on the subject.

7            What was in that notebook?

8            A      Essentially what happens when a person is  
9        Tased, you know. I viewed a video of a subject being  
02:23:25 10        Tased. And per the articles that I've read, I find  
11        that there is more than just an electrical component  
12        of it; that there are some biochemical changes that  
13        also occur with the body in addition to the  
14        electrical disruption of the rhythm in the heart.

02:23:54 15            Q      What are the biochemical changes that your  
16        research has -- the research that you conducted, what  
17        are some of the biological changes that you have  
18        learned that the Taser has the potential for?

19            What biological -- what biochemical changes  
02:24:17 20        did you determine the deployment of Tasers could  
21        have?

22            A      Basically what happens is, that it's all  
23        related to the cardiovascular disturbance, you know,  
24        especially with repeated application of the Taser and  
02:24:36 25        also the prolonged application of the Taser in that

1       there are biochemical changes that occur related to  
2       the acid-base balance in the body.

3           Q     And would those biochemical changes be  
4       different for -- if you know, for a healthy person  
**02:25:02** 5       versus, say, somebody who may have an enlarged heart  
6       and a liver that is not properly functioning?

7           MR. SHERMAN: Objection; foundation;  
8       speculation. It assumes facts not in evidence;  
9       incomplete hypothetical.

**02:25:15** 10          THE WITNESS: I don't know. Well, most of  
11       these studies are done on animals. Because you can't  
12       do it on humans, unless you've got volunteers, and  
13       the volunteers they usually get are healthy people.

14       BY MR. HENNESSEY:

**02:25:27** 15          Q     Police officers and the like?

16          A     And whoever and probably then some volunteer  
17       prisoners.

18          MR. SHERMAN: I've been Tasered. I'm not a  
19       police officer.

**02:25:37** 20          MR. HENNESSEY: But you probably deserved  
21       it.

22          MR. SHERMAN: Just for the record, I  
23       probably did.

24          THE WITNESS: And, you know, and they do  
25       some -- but these volunteers are not repeatedly

1                   Tasered or Tasered for a long time.

2                   So most of the studies are done on animals,

3                   and but they find that certain animals produce the

4                   same similar changes in their system as humans and so

**02:26:08** 5                   they use these animals.

6                   BY MR. HENNESSEY:

7                   Q      Are you talking about pigs?

8                   A      Pigs, yes.

9                   Q      And is that because of their -- because of

**02:26:13** 10                  their skin and because of their genetic make-up that

11                  they have been the subject of testing to your

12                  knowledge?

13                  A      Yes. Probably because the human rights

14                  people don't object, I mean.

**02:26:28** 15                  MR. SHERMAN: Who cares about a pig.

16                  THE WITNESS: It's a pig.

17                  MR. HENNESSEY: I'm sure PETA cares.

18                  BY MR. HENNESSEY:

19                  Q      The biochemical changes that have been

**02:26:37** 20                  determined, can you describe some of them with more

21                  specificity?

22                  A      Well, we have changes. Because of the

23                  muscle irritation, you've got muscle enzyme changes

24                  like the, you know, lactic acid, dehydrogenase. The

**02:27:00** 25                  heart muscle --

1 Q I'm sorry. You said like lactic acid. And  
2 then what did you say?

3 A Dehydrogenase.

4 Q Dehydrogenase?

02:27:07 5 A Yes. The heart muscle, the enzyme Troponin  
6 has been elevated in these people along with a --  
7 the --

8 Q I'm sorry. The enzyme Tro- --

9 A Troponin.

02:27:26 10 Q Can you spell that, please?

11 A T-r-y-p-o-n-i-n (sic), Troponin, yes. And  
12 that's the most sensitive change associated with  
13 heart muscle. With elevated Troponin, you have a  
14 heart attack.

02:27:44 15 Q And what are the changes that have been  
16 found in that enzyme that you just described?

17 A They find that the levels increase.

18 Q And what are the dangers, if any, of the  
19 increase in changes in that particular enzyme.

02:28:01 20 A If there is an increase, that means there is  
21 some damage to that muscle and that organ or that  
22 organ. So this is -- so there is some damage, but  
23 it's microscopic. There is some damage to those  
24 muscles, and also there is a derangement in what we  
call the acid-base balance in the body.

1                   The pH, which is normally around 7.3,  
2 sometimes becomes acid. And when the body becomes  
3 acid, especially to the heart muscle, it becomes very  
4 sensitive. So it becomes irritated and very inducive  
**02:28:47** 5 to cardiac arrhythmia.

6                   Q     How is the pH levels affected by the  
7 application of a Taser?

8                   A     Because with the contraction, you've got  
9 changes in the chemical component. And when you're  
**02:29:13** 10 Tased, you stop breathing while you're being Tased.  
11 While the electrical component is going through you,  
12 you're not breathing.

13                  So a normal person could overcome that  
14 probably because the body will try to compensate.

**02:29:33** 15                  If you do not compensate properly, you  
16 either have respiratory acidosis. And if you've got  
17 enough tissue damage, depending the organ that is  
18 damaged, you could have what they call metabolic  
19 damage.

**02:29:50** 20                  And because of that, it changes. The pH  
21 will change. The heart muscle becomes very  
22 sensitized through irritation.

**02:30:14** 25                  Q     When you say that the person stops breathing  
during the Taser cycle, does that have anything to do  
with the -- with the disabling of muscle functioning

1       really tell whether the heart is really beating or  
2       not because it disrupts the EKG pattern.

3           Q     So the animals were hooked up to EKG  
4       machines and things like that during the -- during  
**02:32:09** 5       those tests?

6           A     Yes, during the actual Tasering.

7           Q     And do you know if there have been any  
8       similar human testing done on members of law  
9       enforcement or anybody else where EKGs were hooked up  
**02:32:25** 10      to them --

11          A     No.

12          Q     -- during the Tasering process?

13           MR. SHERMAN: Objection; speculation;  
14       foundation.

**02:32:30** 15      THE WITNESS: I don't know.

16          BY MR. HENNESSEY:

17          Q     From the different effects that you have  
18       described that a Taser is capable of doing, do you  
19       have an opinion as to what the Taser did to Mr. Tran?

**02:33:02** 20      MR. SHERMAN: Objection; assumes facts not  
21       in evidence; calls for speculation; lacks foundation.

22          THE WITNESS: I can't say for sure; in other  
23       words, all I know is cardiac arrhythmia occurred.

24          BY MR. HENNESSEY:

**02:33:18** 25      Q     And is that consistent with all of the

1 BY MR. HENNESSEY:

2 Q And there was nothing that in the  
3 description that was given by Officer Karschamroon,  
4 who described the visual appearance of Mr. Tran as  
**02:40:25** 5 looking confused and like he needed help, he did not  
6 describe any symptoms that to you as a medical doctor  
7 indicate that he was in cardiac -- suffering from a  
8 cardiac arrhythmia at that moment, was there?

9 MR. SHERMAN: Objection; incomplete  
**02:40:48** 10 hypothetical; vague and ambiguous.

11 THE WITNESS: When he first saw him, there  
12 was no -- there was no evidence of cardiac  
13 arrhythmia.

14 BY MR. HENNESSEY:

**02:40:55** 15 Q There was no -- and he did not describe ever  
16 during the time of his contact prior to the Tasering  
17 of Mr. Tran suffering from labored breathing prior to  
18 that time; correct?

19 MR. SHERMAN: Objection; misstates  
**02:41:15** 20 testimony; assumes facts not evidence.

21 THE WITNESS: That's correct.

22 BY MR. HENNESSEY:

23 Q He did not -- Officer Karschamroon did not  
24 say anything that Mr. Tran was doing that led him to  
**02:41:24** 25 believe that he was suffering -- you know, that he

1 had -- was breathing very heavily until after the  
2 Tasering event?

3 That was the first time the labored  
4 breathing issue ever came up; isn't that true?

02:41:39 5 MR. SHERMAN: Misstates; assumes facts not  
6 in evidence; lacks foundation; calls for speculation.

7 MR. HENNESSEY: At least from what he  
8 testified to?

9 THE WITNESS: That is correct.

02:41:45 10 BY MR. HENNESSEY:

11 Q And is that consistent with the fact that he  
12 did not at least outwardly appear to be suffering  
13 from a cardiac arrhythmia until after the Tasering  
14 event?

02:41:58 15 MR. SHERMAN: Same objections.

16 THE WITNESS: That is correct.

17 MR. SHERMAN: That's a train.

18 BY MR. HENNESSEY:

19 Q This section, I guess, authored by -- well,  
02:42:50 20 is this part -- and I know it's part of Exhibit C,  
21 also; but every time I look through that, I can't  
22 ever find it. This section here about the follow --  
23 the follow requests --

24 A Yes.

02:43:05 25 Q -- and actions taken, is that the area that

1           A     In other words, any drug, if you read the  
2         PDR, it says it's bad for your heart, liver. So I  
3         would say the levels he has is not in the fatal  
4         range.

**03:11:10** 5           Q     Well, we have it written down somewhere.

6                   They're real high; correct?

7           A     The blood levels, the book that I use are  
8         written by Bassell (phonetic). Bassell used to be  
9         the -- one of the toxicologists. Now he wrote the

**03:11:30** 10         book. It's a well-known book.

11                   The fatal range of postmortem  
12         Diphenhydramine, the range is usually 8 to 31  
13         milligrams per liter. That's in the postmortem  
14         blood. But in his peripheral blood, there is usually  
**03:11:49** 15         a redistribution after death. It's 6.2 in the  
16         peripheral blood. So it's even lower than the  
17         peripheral blood.

18                   So I would say in the blood, the  
19         Diphenhydramine level is not in the fatal range.

**03:12:08** 20         Q     Okay.

21           A     It's in the toxic range, but not fatal.

22           Q     And what does the fatty liver mean, if  
23         anything, to you?

24           A     Fatty liver means the liver is failing and  
**03:12:26** 25         that would account in my opinion why he has high

1 BY MR. HENNESSEY:

2 Q You indicated when Mr. Sherman asked you the  
3 question what kind of events would cause -- what  
4 types of events could cause Mr. Tran to have a  
**03:21:53** 5 cardiac event, would the application of a Taser be a  
6 stressful event that could cause him to have a  
7 cardiac event?

8 MR. SHERMAN: Objection; asked and answered.

9 THE WITNESS: It could.

**03:22:04** 10 BY MR. HENNESSEY:

11 Q And that's what you opined in this autopsy;  
12 correct?

13 A Yes, yes.

14 Q Is it my understanding that -- that the  
**03:22:23** 15 symptoms of a cardiac arrhythmia would be problems  
16 breathing, shortness of breath, or labored breathing?

17 A Yes.

18 Q That would be one of them?

19 A Yes, one of them.

**03:22:37** 20 Q And also you indicated an irregular  
21 heartbeat.

22 Would -- if somebody had been trained in how  
23 to take somebody's pulse, either their carotid pulse  
24 or their pulse in their wrist, would the irregular  
**03:22:56** 25 heartbeat be present?

1 police caused Mr. Tran's death, your answer was  
2 "yes"; correct?

3 MR. SHERMAN: Objection; misstates.

4 THE WITNESS: The confrontation contributed  
03:35:47 5 to his death. Yes.

6 BY MR. HENNESSEY:

7 Q The confrontation that Mr. Tran had with  
8 members of law enforcement contributed to his death?

9 MR. SHERMAN: Same objection; foundation;  
03:35:56 10 assumes facts not in evidence; speculation.

11 THE WITNESS: I don't know who else he had a  
12 confrontation with, so --

13 MR. HENNESSEY: I'm just -- I mean, frankly,  
14 I'm not --

03:36:08 15 THE WITNESS: Yes.

16 MR. HENNESSEY: -- I'm not meaning to be  
17 disrespectful in any way, shape, or form.

18 BY MR. HENNESSEY:

19 Q The only -- I mean, you read the information  
03:36:14 20 from the first responding police officer who  
21 described in detail what happened out there.

22 And you're not aware of Mr. Tran being  
23 involved in any other type of confrontation within  
24 minutes before he passed away, other than the police;  
03:36:35 25 is that true?

1 A That's what I have in my report. That's  
2 what I put as cause of death.

3 MR. HENNESSEY: And I just was responding to  
4 that -- to a question, and I am done; and I thank you  
**03:36:46** 5 for your time.

6 MR. SHERMAN: I have one more.

7 MR. HENNESSEY: Sorry.

8

9 FURTHER EXAMINATION

**03:36:48** 10 BY MR. SHERMAN:

11 Q Since you don't have a lot of history before  
12 the officers get there, hypothetically speaking --  
13 purely hypothetically speaking -- if Mr. Tran was  
14 running up and down the street hypothetically  
**03:36:59** 15 speaking and within a short period of time of the  
16 officers' arrival, within minutes, and then the  
17 officers came along and had a brief interaction with  
18 him with whatever struggle there was and with the  
19 Tasering event, could he have died from the exercise  
**03:37:15** 20 that he had done beforehand, hypothetically speaking?

21 A Yes. Hypothetically, if he was short of  
22 breath already, yes, you can't rule that out, but he  
23 has to be short of breath.

24 Q Huffing and puffing?

**03:37:30** 25 A Huffing and puffing. You know, you know if

1 until the point that following the Tasering where he  
2 noticed labored breathing, he was not describing any  
3 symptoms that were consistent with Mr. Tran  
4 exhibiting a cardiac arrhythmia, did he?

**03:38:41** 5 MR. SHERMAN: Vague and ambiguous.

6 THE WITNESS: There was no indication from  
7 any observations that he was suffering cardiac  
8 arrhythmia.

9 BY MR. HENNESSEY:

**03:38:50** 10 Q In fact, he said that he was responsive,  
11 cooperative. He did not describe any types of  
12 breathing disorders at any time before this Tasering.

13 So would that be -- would it be reasonable  
14 to believe that whatever exercise he may have done  
**03:39:10** 15 before the police arrived caused his death versus  
16 what you say in your report caused his death?

17 A No. He was not -- most likely he did not  
18 have cardiac arrhythmia.

19 Q And that is consistent with the observations  
**03:39:23** 20 that Officer Karschamroon very specifically described  
21 that he saw?

22 A Yeah.

23 Q What he described is inconsistent with  
24 somebody who is suffering a cardiac arrhythmia; is  
**03:39:36** 25 that true?

1 FURTHER EXAMINATION

2 BY MR. HENNESSEY:

3 Q In response to that one question, whatever  
4 hypothetically happened earlier in the day, the  
03:40:30 5 observations made by Officer Karschamroon do not in  
6 any way, shape, or form indicate that Mr. Tran was  
7 experiencing signs of cardiac arrhythmia until after  
8 the Tasering; isn't that true?

9 MR. SHERMAN: Objection; asked and answered;  
03:40:47 10 cumulative.

11 THE WITNESS: That is correct, according to  
12 his descriptions.

13 MR. HENNESSEY: Thank you. I don't have  
14 anything further.

03:40:54 15 MR. SHERMAN: Stipulation?

16 MR. HENNESSEY: Yes.

17 MR. SHERMAN: Hi. Can you call the doctor  
18 and tell him I'm going to be a few minutes late, but  
19 I'm on my way? Thanks.

03:41:02 20 I would propose that -- do you want me to do  
21 it or do you want to do it?

22 MR. HENNESSEY: I don't even know how to do  
23 it.

24 MR. SHERMAN: That's right.

03:41:07 25 I propose the following stipulation: That

1 CERTIFICATION  
2 OF  
3 CERTIFIED SHORTHAND REPORTER  
4  
5

6 I, the undersigned, a Certified Shorthand  
7 Reporter of the State of California do hereby certify:

8 That the foregoing proceedings were taken  
9 before me at the time and place herein set forth; that  
10 any witnesses in the foregoing proceedings, prior to  
11 testifying, were placed under oath; that a verbatim  
12 record of the proceedings was made by me using machine  
13 shorthand which was thereafter transcribed under my  
14 direction; further, that the foregoing is an accurate  
15 transcription thereof.

16 I further certify that I am neither  
17 financially interested in the action nor a relative or  
18 employee of any attorney of any of the parties.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed this day of  Jennifer K. Abe  
21  
22

23 Dated: \_\_\_\_\_  
24  
25